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INTERSTATE COMMERCE COMMISSION

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November 14, 1988

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two copies each of 1) a Trust Indenture dated September 15, 1988, 2) a Lease of Equipment #1 dated as of September 20, 1988, 3) a Lease of Equipment #2 dated as of September 20, 1988 and 4) a Lease of Equipment #3 dated as of September 20, 1988, each a primary document as defined in 49 C.F.R. Section 1177.1(a).

The names and addresses of the parties to the enclosed documents are:

Trustee: The Royal Trust Company  
P.O. Box 7500  
Station A  
Toronto, Ontario M5W 1P9  
CANADA

Company/  
Lessor: SLX Canada Inc.  
1500 Bow Valley Square IV  
250 6th Avenue S.W.  
Calgary, Alberta T2P 3H7  
CANADA

Lessee: Canadian National Railway Company  
935 de La Gauchetiere West  
Montreal, Quebec H3B 2M9  
CANADA

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NOTICE OF FILING

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Countersigned - C.T. Kappler

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
November 14, 1988  
Page Two

A description of the railroad equipment covered by the enclosed documents is:

Eighteen (18) Model SD-50F, 3600 HP Diesel Electric Locomotives bearing Serial Numbers CN 5440 through CN 5457, both inclusive.

Also enclosed is a check in the amount of \$52 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return stamped copies of the enclosed documents to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, D.C. 20006.

A short summary of the enclosed primary documents to appear in the Commission's Index is:

Trust Indenture dated September 15, 1988 between The Royal Trust Company, Trustee, and SLX Canada Inc.; and Lease of Equipment #1, #2 and #3, each dated as of September 20, 1988, between SLX Corporation, Lessor, and Canadian National Railway Company, Lessee, covering 18 Model SD-50F, 3600 HP Diesel Electric Locomotives, bearing Serial Numbers CN 5440 - CN 5457, inclusive.

Very truly yours,

  
Charles T. Kappler

Enclosures

# Interstate Commerce Commission

Washington, D.C. 20423

11/14/88

OFFICE OF THE SECRETARY

Charles T. Kappler  
Alvord & Alvord  
918 16th Street N.W.  
Washington, D.C. 20006

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/14/88 at 11:10am, and assigned re-cordation number(s). 16024, 16024-A 16024-B, 16024-C

Sincerely yours,

*Nesta L. McGee*

Secretary

Enclosure(s)

ICC Copy

SLX CANADA INC.

and

THE ROYAL TRUST COMPANY INTERSTATE COMMERCE COMMISSION  
as  
TRUSTEE

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TRUST INDENTURE

DATED SEPTEMBER 15, 1988

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**SCHEDULES:**

A	Form of Series 88-1 Class A Senior Debentures .
B	Form of Series 88-1 Class C Subordinated Debenture.
C	Form of Lease Agreement.
D	Company New Issue Test Certificate.
E	Class C New Issue Test Certificate.

This TRUST INDENTURE made the 15th day  
of September, 1988

B E T W E E N:

SLX CANADA INC., a corporation formed  
under the Canada Business Corporations  
Act

(hereinafter called the "Company")

OF THE FIRST PART,

-and-

THE ROYAL TRUST COMPANY, a trust company  
incorporated under the laws of Quebec,

(hereinafter called the "Trustee")

OF THE SECOND PART,

WHEREAS:

- A. the Company desires to create, secure and issue its  
Debentures as herein provided;
- B. the Company, under the laws relating thereto, is duly  
authorized to create, secure and issue the Debentures to be  
issued as herein provided;
- C. all things necessary have been done and performed to make  
the Debentures, when certified by the Trustee and issued as  
herein provided, valid, binding and legal obligations of the  
Company with the benefits and subject to the terms of this Trust  
Indenture and to make this Trust Indenture a valid and binding  
indenture for securing the Debentures, in accordance with their  
respective terms; and
- D. the foregoing recitals are made as representations of fact  
by the Company and not by the Trustee;

NOW THEREFORE for value received the parties agree as  
follows:

**ARTICLE ONE**  
**INTERPRETATION**

**Section 1.01 - Definitions.** In this Trust Indenture, unless there is something in the context inconsistent therewith, the following expressions have the following meanings, namely:

**"Acceleration Date"** has the meaning set forth in Section 9.02;

**"Adjusted Assets"** means the aggregate of:

- (i) the value of all Eligible Investments owned by the Company, each of which shall be valued at the lower of cost and fair market value;
- (ii) an amount equal to 97% of the present value of all future contractually obligated payments (excluding any payments which are contingent on the renewal of, extension of, exercise of or non-exercise of a termination or purchase option under a Lease Agreement) owing to the Company under Lease Agreements entered into by the Company in accordance herewith, such present value to be determined by discounting such future rental payments to the date of calculation at a discount rate equal to the Weighted Average Debt Rate; and
- (iii) an amount equal to 100% of the present value of the face amount of any Residual Insurance such present value to be determined by discounting each face amount from the date on which it may first become payable to the Company to the date of calculation at a discount rate equal to the Weighted Average Debt Rate.

**"Adjusted Liabilities"** means at any time the aggregate of:

- (i) the present value of all amounts payable by the Company in respect of principal and interest on all Class A Debentures, such present value to be determined by discounting each amount from the date for payment of such amount to the date of calculation at a discount rate equal to the Weighted Average Debt Rate; and
- (ii) the present value of the principal of all Class B Debentures, such present value to be determined by discounting the principal amount of each Class B Debenture from the date of maturity to the date of calculation at a discount rate equal to the Weighted Average Debt Rate.

**"After-Acquired Property"** means all property acquired by the Company after the date hereof, including, without limitation, any property acquired by the Company to replace any property released from the Lien hereof, and all improvements, extensions or additions to the property owned by the Company which by this Trust Indenture is, or is intended to become, part of the Mortgaged Property.

**"Auditors"** means an independent nationally recognized firm of chartered accountants duly appointed as auditors of the Company and acceptable to the Trustee.

**"Banking Day"** means any day except a Saturday, a Sunday or a day on which banks generally are not open for money market and foreign exchange dealings at their principal offices in each of Toronto, Calgary, and Montreal.

**"Canadian 'A' Corporate"** means a corporation incorporated in Canada the long term debt obligations of which are rated at least A, A-1 or an equivalent rating by a Rating Service.

**"Canadian Prime Rate"** means the annual rate of interest established by The Royal Bank of Canada from time to time at its main branch in Toronto as a reference rate then in effect for determining interest rates on Canadian dollar commercial loans made in Canada; any change in such rate is to be effective on the date such change is established.

**"Canada Bond Rate"** means a rate of interest equal to:

- (i) the arithmetic average of estimates provided by the Reference Dealers (or two of them if only two of them provide estimates or one of them if only one of them provides an estimate), three Banking Days prior to the date of calculation, of the new issue yield of a hypothetical issue of Government of Canada bonds issued on the date of calculation and with a period to maturity equal to the Weighted Average Maturity; or
- (ii) if the foregoing determination may not be made for any reason, such rate as may be determined by the Trustee acting reasonably and in consultation with the Auditors.

For the purposes of this definition, "Weighted Average Maturity" means, with respect to one or more payment obligations, a number of days equal to the aggregate of (x) for each such payment obligation, the number of

days from and including the date of calculation of the Canada Bond Rate to but excluding the date on which such payment obligation falls due multiplied by the amount of such payment obligation divided by (y) the total amount of all such payment obligations.

"Capital Lease" means a lease, conditional sales agreement, title retention agreement, equipment trust or other arrangement for the use of Eligible Equipment in respect of which rental or other payments thereunder would, in accordance with Generally Accepted Accounting Principles, be capitalized on a balance sheet of the lessee.

"Cash Available" means:

- (i) at the start of the first semi-annual period in any calculation, the cost to the Company of any Cash Equivalents; and
- (ii) at the end of the first semi-annual period in any calculation and at the end of any subsequent semi-annual period, the aggregate of:
  - (a) the Cash Available at the end of the last period (or in the case of the first period the Cash Available as determined in (i) above) multiplied by a fraction the numerator of which is 1.07 multiplied by the number of days in the period and the denominator of which is 365;
  - (b) any contractually obligated payments from a Lessee to the Company which fall due during the period, including any payments under Lease Agreements which are no longer contingent on the renewal of, extension of, exercise of or non-exercise of a termination or purchase option under a Lease Agreement;
  - (c) the face amount of any Residual Insurance which may become receivable by the Company during the period;
  - (d) with respect to any Eligible Investments owned by the Company which are excluded from the Cash Equivalents valued in (i) above, any amounts which, pursuant to the terms of those Eligible Investments, are receivable by the Company during the period ;and
  - (e) any other payments which the Company is entitled to receive during the period excluding any payments to the Company with respect to any Eligible Investment which has been included as a Cash Equivalent in (i) above,



less the Cash Requirements during that period.

**"Cash Equivalents"** means any cash on hand and those Eligible Investments owned by the Company which, as determined by the Company, are being held by the Company for liquidity purposes.

**"Cash Flow Test"** means a test which is met if, for each semi-annual period (or part thereof in the case of the first and last period) ending on April 1 or October 1 of each year during the Cash Flow Test Period, the Cash Available at the end of that semi-annual period is greater than zero.

**"Cash Flow Test Period"** means for any Cash Flow Test under Section 8.02(8), the period of time from the date of calculation to the later of (a) the due date of the last payment (excluding any payments which are contingent on the renewal of, extension of, exercise or non-exercise of a termination or purchase option under a Lease Agreement) owing to the Company under any Lease Agreement retained by the Company, or (b) the last date of maturity of any Class A Debenture or Class B Debenture.

**"Cash Requirements"** means, during any period, the aggregate of:

- (i) all mandatory payments on account of principal or interest on any Class A Debenture which are required during that period;
- (ii) the principal amount of each Class B Debenture which matures during that period;
- (iii) any amounts payable by the Company during that period pursuant to the terms of the Management Agreement;
- (iv) any cash taxes projected by the Company as payable during that period;
- (v) any amounts payable during that period on account of dividends on or redemptions of common or preferred shares of the Company, assuming such amounts are paid to the maximum allowed hereunder;
- (vi) any amounts payable by the Company during that period on account of Residual Insurance;
- (vii) any amounts payable by the Company during that period on account of directors' and officers' liability insurance or in relation to the indemnification of directors or officers or on account of fees to the Independent Director; and

(viii) any other amounts payable by the Company during that period.

"Casualty Occurrence" means an event in which any portion of Eligible Equipment shall be or become lost, stolen, destroyed, or irreparably damaged or damaged beyond economic repair, from any cause whatsoever, or taken or requisitioned by condemnation, expropriation or otherwise for a period in excess of ninety (90) days during the term of any Related Lease for which the Related Lease requires the payment of a fixed sum of money and the termination of rental payments with respect to that portion of the Eligible Equipment.

"Certified Resolution" means a copy of a resolution of the directors certified by a director or officer of the Company under its corporate seal to have been duly passed by the directors and to be in full force and effect on the date of such certification.

"CN" means Canadian National Railway Company, continued under the laws of Canada, and its successors and assigns.

"Company" means SLX Canada Inc., a company incorporated under the laws of Canada and any successor company to or of the Company which shall have complied with the provisions of Article Eleven hereof.

"Counsel" means a barrister or solicitor or a firm of barristers and solicitors, duly qualified in the relevant jurisdiction, selected by and representing the Company and acceptable to the Trustee.

"Crystallization Date" has the meaning set forth in Section 8.02(7)(vi).

"Debentures" means the debentures of the Company issued and certified hereunder and for the time being outstanding.

"Debenture holders" or "holders" means the persons for the time being entered in the registers hereinafter mentioned as holders of Debentures.

"Debenture holders' Request" means an instrument signed in one or more counterparts by the holder or holders of not less than 50% of:

- (i) the outstanding principal amount of all Class A Debentures and the aggregate present value of all Class B Debentures, the present value of each Class B Debenture to be determined by discounting the principal amount of that Class B Debenture from its

date of maturity to the date of the Debenture holder's Request at a discount rate equal to the Canada Bond Rate (determined separately for each Class B Debenture); or

- (ii) if there are no outstanding Class A Debentures or Class B Debentures, then the outstanding principal amount of all Class C Subordinated Debentures,

requesting the Trustee to take or refrain from taking some action or proceeding specified therein.

"default" means an event or circumstance which constitutes an Event of Default or which with the giving of notice and/or lapse of time and/or determination of materiality or other condition would constitute an Event of Default.

"director" means a director of the Company for the time being and "directors" or "board of directors" means the board of directors of the Company and reference to action by the directors means action by the directors of the Company as a board.

"Early Termination" means with respect to any Related Lease, the termination thereof or the advancement of any date for payment of any amount thereunder at any time prior to the date stated thereunder at the date of execution thereof except termination due to Casualty Occurrence.

"Eligible Equipment" means any personal property used in the business of CN or a Canadian "A" Corporate and any other type of personal property which is approved by the Trustee.

"Eligible Investments" means and includes the following:

- (i) bonds, bills or other evidences of indebtedness of or fully guaranteed by CN or the government of Canada, Alberta, Quebec or Ontario, payable in Canadian currency;
- (ii) freely negotiable or transferable money market instruments in bearer form properly endorsed and:
  - (A) issued by an eligible bank and representing a deposit obligation of such eligible bank (including for this purpose an unconditional undertaking of the issuing eligible bank to make delivery of the instrument not later than the next Banking Day);
  - (B) having endorsed thereon an unconditional guarantee or promise to pay of an eligible bank, if the primary obligation is an unconditional promise to pay of a subsidiary or affiliate of an eligible bank;

- (C) being a banker's acceptance accepted by an eligible bank;
- (iii) instruments representing deposit obligations issued by an eligible bank (including without limitation certificates of deposit, guaranteed investment certificates, deposit receipts and evidences of demand deposits); and
- (iv) such other securities as may be designated by the Trustee in writing from time to time,

and for the foregoing purposes "eligible bank" means The Royal Bank of Canada, The Toronto-Dominion Bank, Canadian Imperial Bank of Commerce, The Bank of Nova Scotia, Bank of Montreal, or Hongkong Bank of Canada.

"Event of Default" means any of the events specified in Section 9.01.

"extraordinary resolution" shall have the meaning set forth in Section 12.13.

"Generally Accepted Accounting Principles" means generally accepted accounting principles which are in effect in Canada from time to time applicable to the Company applied in a consistent manner from period to period.

"Governmental Approval" means any authorization, permit, approval, grant, licence, consent, right, privilege, registration, filing, commitment, order, judgment, direction, ordinance or decree issued or granted by law or by any Governmental Body.

"Governmental Body" means any government, parliament, legislature, regulatory authority, agency, tribunal, department commission, board or court or other law, regulation or rule making entity (including a Minister of the Crown) having or purporting to have jurisdiction on behalf of any nation, state, province, municipality or district, or any subdivision thereof.

"Guarantee" by any Person means (i) any guarantee, sale with recourse, endorsement (other than for collection or deposit in the ordinary course of business) or other obligation (contingent or otherwise) to pay, purchase, repurchase or otherwise acquire or become liable upon or in respect of any Indebtedness of another, and (ii) without limiting the generality of the foregoing, any obligation (contingent or otherwise) to make a payment to another for goods, property or services regardless of the non-delivery or nonfurnishing thereof, or to make an investment in another, or to maintain the capital, working capital, solvency or general financial condition of another, or to indemnify another against and hold him harmless from damage, loss, or liability, all under circumstances intended to enable another to incur or pay any

Indebtedness or to comply with agreements relating thereto or otherwise to assure or protect creditors against loss in respect of Indebtedness. The amount of each Guarantee shall be deemed to be the amount of all Indebtedness of the other obligor to whom the Guarantee relates, unless the Guarantee is limited to a determinable amount, in which case the amount of such Guarantee shall be deemed to be such determinable amount.

"Indebtedness" means with respect to any Person (i) any obligation, contingent and otherwise, which in accordance with Generally Accepted Accounting Principles should be classified upon such Person's balance sheet as a liability, (ii) any obligation secured by any mortgage, pledge, charge or security interest existing on property owned or acquired by such Person subject to such mortgage, pledge, charge or security interest, whether or not the obligation secured thereby shall have been assumed, and (iii) any Guarantee by such Person; but Indebtedness shall not include:

- (a) deferred taxes on income, minority interests in subsidiaries or associated companies or shareholders' equity;
- (b) any indebtedness in relation to money paid to the Company by a Class C Subordinated Debenture holder in assisting the Company to remedy any default hereunder pursuant to Section 9.02(1);
- (c) Put Obligations; and
- (d) any operating leases entered into by the Company as lessee for the purpose of subleasing Eligible Equipment to a Lessee where the Company has obtained, prior to the Company entering into the operating lease, an irrevocable commitment from the Lessee to enter into a Lease Agreement in respect of the Eligible Equipment.

"Independent Director" has the meaning provided in the Shareholders Agreement.

"Lease Agreement" means a lease of Eligible Equipment entered into between the Company as lessor and CN or a Canadian "A" Corporate as Lessee which is substantially in the form of Schedule C hereto.

"Lease Rate" means, for any Lease Agreement or lease under which the Company is the lessor, an implicit discount rate that, at the date of the Lease Agreement or lease, causes the aggregate present value of:

- (i) the rental payments under the Lease Agreement or lease (excluding any rental payments which are contingent on the renewal of, extension of, exercise of or non-exercise of a termination or purchase option under the Lease Agreement or lease); and

- (ii) the purchase option price payable to the Company upon the exercise by the lessee of a purchase option at the end of the Lease Agreement or lease,

to be equal to the cost of the Eligible Equipment to the Company.

"Lessee" means the lessee under a Lease Agreement.

"Lien" means a mortgage, lien, charge, security interest or encumbrance, whether fixed or floating, on any property, whether real, personal or mixed, tangible or intangible, or a pledge or hypothecation thereof or any subordination to any right or claim of any other Person in respect thereof.

"Lien hereof" and "Lien of this indenture" and similar expressions mean the security constituted hereby or created pursuant hereto, including without limitation the floating charge and the security interest created hereby.

"Management Agreement" means an agreement by such name dated September 19, 1988 to be entered into between the Company and SLX Management Inc. and any reference to such agreement in this indenture is a reference to such agreement as executed and delivered on September 19, 1988 together with any modifications, supplements or amendments which are consented to by the Trustee.

"Mortgaged Property" means all the undertaking, property, rights and assets of the Company which are or are at any time intended to be subject to the Lien hereof.

"New Issue Tests" means the tests referred to in Section 8.02(8).

"Officers' Certificate" means a certificate, conforming to the requirements of Section 1.08, signed by two officers of the Company.

"Permitted Liens" means at any particular time any of the following Liens:

- (i) Liens for taxes or assessments and governmental charges or levies which are not delinquent or which are contested in good faith by appropriate action promptly initiated and diligently conducted and then only if in respect of such contested amount there shall have been deposited with the Trustee cash in an amount sufficient to pay the amount of such taxes, assessments, charges and levies or a surety bond satisfactory to the Trustee in an amount sufficient for such payment and which cash or bond the Trustee is authorized to use or draw upon for the purpose of paying such taxes, assessments, charges or levies;

- (ii) undetermined or inchoate Liens arising in the ordinary course of the Company's business, a claim for which has not been filed or registered pursuant to law, or of which notice in writing shall not have been given to the Company or the Trustee;
- (iii) statutory Liens incurred or deposits made in the ordinary course of the Company's business in connection with worker's compensation, unemployment insurance and other social security legislation;
- (iv) any Lien, payment of which has been provided for by (i) deposit with the Trustee of an amount in cash, or (ii) the obtaining of a surety bond or other arrangement satisfactory to the Trustee, or (iii) the Company being fully indemnified by a Lessee, in an amount sufficient in any case to pay or discharge the same and which deposit or bond or indemnity or other arrangement the Trustee is authorized to use or draw on for that purpose;
- (v) any Lien with respect to either a commitment to enter into a Lease Agreement or a Lease Agreement which has not been funded by the issuance of any Class A Debentures or the Eligible Equipment to which such commitment or Lease Agreement relates, where such Lien is incurred in relation to the Company obtaining funding on an interim basis to purchase that Eligible Equipment; and
- (vi) the Lien hereof.

"Person" means an individual, corporation, partnership, trust, joint venture, unincorporated organization, government, or any agency or political subdivision thereof, or other incorporated or unincorporated entity; and pronouns have a similarly extended meaning.

"Portfolio Amount" means at any date the aggregate initial purchase price paid by the Company for all Eligible Equipment owned by the Company at that date.

"Purchase and Assignment Agreement" means an agreement between the Company and any Person whereby such Person, among other things, purchases Eligible Equipment owned by the Company and has assigned to it the Lease Agreement in respect thereof.

"Put Obligation" means an agreement between the Company and the holder of a Class B Debenture which relates to the residual value of the Eligible Equipment leased under the Lease Agreement assigned to such holder or the lease arranged for such holder in connection with the issuance of such Debenture.

"Rating Service" means any of Dominion Bond Rating Service, Canadian Bond Rating Service, Standard & Poor's

Corporation and Moody's Investors Service.

**"Reference Dealers"** means RBC Dominion Securities Inc., ScotiaMcLeod Inc. and Wood Gundy Inc. or any substitute dealers designated in writing by the Company from time to time subject to acceptance by the Trustee.

**"Related Lease"** means with respect to any Class A Debenture, the relevant Lease Agreement entered into on the date of issue of that Class A Debenture or designated as such by the Company on the date of issue of that Class A Debenture.

**"Residual Insurance"** means any insurance which protects the Company from the whole or any part of a potential decrease in the residual value of Eligible Equipment at the termination of a Lease Agreement or at the termination of a lease arranged by the Company for the holder of a Class B Debenture.

**"Section"** means the relevant section, subsection, paragraph, subparagraph or clause referred to in this Agreement.

**"Senior Indebtedness Ratio"** as calculated at any date means the ratio of A to B where A equals the aggregate of:

- (i) as at the date of calculation, the outstanding principal of all Class A Debentures together with any accrued and unpaid interest thereon;
- (ii) the present value of each Class B Debenture, such present value to be determined by discounting the principal amount of each Class B Debenture from its date of maturity to the date of calculation at a discount rate equal to the Canada Bond Rate (determined separately for each Class B Debenture); and
- (iii) as at the date of calculation, the amount at which any outstanding preferred shares of the Company are carried in the stated capital account of the Company,

and where B is equal to the aggregate of:

- (a) as at the date of calculation, the total amount at which the common shares of the Company are carried in the stated capital account of the Company;
- (b) accumulated earnings retained in the business of the Company, as set forth in the audited balance sheet of the Company as at the most recent fiscal year end plus net income and any depreciation for any quarter year ended since the most recent fiscal year end as set forth in the quarterly statements for each such period;



- (c) if there are any preferred shares of the Company outstanding at the date of calculation, the amount of any deferred taxes;
- (d) the outstanding principal of and any accrued and unpaid interest on all Class C Subordinated Debentures;
- (e) the present value of any contractually obligated payments from any Lessee to the Company in respect of a purchase option under a Lease Agreement (which are no longer contingent on the exercise of the purchase option) such present value to be determined by discounting the amount of each payment from the date on which it is payable to the Company to the date of calculation at a discount rate equal to the Canada Bond Rate (determined separately for each such payment); and
- (f) the present value of the face amount of any Residual Insurance such present value to be determined by discounting each face amount from the date on which it may first become payable to the Company to the date of calculation at a discount rate equal to the Canada Bond Rate (determined separately for each such face amount).

"Shareholders Agreement" means an agreement by such name dated September 19, 1988 to be entered into between the Company, the Trustee, Bruce C. Barker and SLX Management Inc.

"this Trust Indenture", "this indenture", "this Deed", "hereto", "herein", "hereof", "hereby", "hereunder" and similar expressions mean or refer to this trust indenture and any indenture, deed or instrument supplemental or ancillary hereto or thereto and the expressions "Article" and "Section" followed by a number mean and refer to the specified article or section of the Trust Indenture.

"Trustee" means The Royal Trust Company, its successors or such other Trustee as may be appointed hereunder from time to time.

"Weighted Average Debt Rate" means the most recently calculated value of an annual rate of interest compounded semi-annually calculated by the Company, on April 1 and October 1 of each year, as the aggregate of the annual interest rate compounded semi-annually applicable to each Class A Debenture multiplied by the outstanding principal amount owing on the corresponding Class A Debenture and divided by the total outstanding principal owing on all Class A Debentures.

"Written order of the Company", "written request of the Company" and "written consent of the Company" mean, respectively, a written order, request and consent of the Company signed in the name of the Company by the directors of the Company and may consist of one or more instruments so executed.

**Section 1.02 - Meaning of "Outstanding".** Every Debenture certified and delivered by the Trustee hereunder shall be deemed to be outstanding until it shall be cancelled or delivered to the Trustee for cancellation or moneys for the payment thereof shall be set aside under Article 10, provided that:

- (a) where a new Debenture has been issued in substitution for a Debenture which has been lost, stolen or destroyed, only one of such Debentures shall be counted for the purpose of determining the aggregate principal amount of Debentures outstanding; and
- (b) for the purpose of any provision of this indenture entitling holders of outstanding Debentures to vote, sign consents, requisitions or other instruments or take any other action under this indenture, Debentures owned directly or indirectly, legally or equitably, by the Company shall be disregarded except that:
  - (i) for the purpose of determining whether the Trustee shall be protected in relying on any such vote, consent, requisition or other instrument or action only the Debentures which the Trustee knows are so owned shall be so disregarded; and
  - (ii) Debentures so owned which have been pledged in good faith other than to the Company shall not be so disregarded if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Debentures in his discretion free from the control of the Company.

**Section 1.03 - Amendments.** Any reference in this Trust Indenture to any act or statute or section thereof shall be deemed to be a reference to such act or statute or section as amended, re-enacted, substituted for or replaced from time to time. Any reference in this indenture to an agreement shall be deemed to be, except as otherwise expressly provided, a reference to such agreement as amended, modified or supplemented from time to time.

**Section 1.04 - Headings, etc.** The division of this Trust Indenture into Articles and Sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Trust Indenture.

**Section 1.05 - Number and Gender.** In this Trust Indenture, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include the masculine, feminine and neuter genders.

**Section 1.06 - Applicable Law.** This Trust Indenture and the Debentures shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the parties hereto attorn and submit to the jurisdiction of the courts of Ontario.

**Section 1.07 - Currency.** Unless otherwise specified, all references to dollar amounts in this indenture and in the Debentures shall mean lawful money of Canada.

**Section 1.08 - General Provisions as to Certificates.**

(1) Each certificate furnished to the Trustee pursuant to any provision hereof shall be in form satisfactory to the Trustee, specify the section or sections where applicable under which the same is furnished and include a statement that the Person making the same has read the provisions hereof relevant thereto.

(2) Each such certificate which evidences, attests or confirms compliance with any covenant or condition provided for herein shall, in addition, include a statement:

- (a) that the Person making the same has made such examination or investigation as is necessary to enable such Person to express an informed opinion as to whether or not such covenant or condition has been complied with;
- (b) that, in the opinion of such Person, such covenant or condition has been complied with in all material respects; and
- (c) that (unless the context otherwise requires), to the knowledge of such Person, no Event of Default has occurred that has not been waived, or if an Event of Default has occurred that has not been waived, specifying the same.

Whenever the delivery of a certificate is a condition precedent to the taking of any action by the Trustee hereunder, the truth and accuracy of the facts and opinions stated therein shall in each case be conditions precedent to the right of the Company to have such action taken, and the Company shall be deemed to represent and warrant that the facts and opinions stated in each such certificate or opinion are true and accurate.

(3) Any certificate may be based, insofar as it relates to legal or financial matters, upon an opinion of Counsel or the Auditors, as the case may be, unless the Person or Persons

giving the same knows or, in the exercise of reasonable care, should know that the opinion with respect to the matters upon which such certificate or opinion may be based as aforesaid is erroneous.

## ARTICLE TWO

### THE DEBENTURES

**Section 2.01 - No Fixed Limitation.** The aggregate principal amount of Debentures which may be issued hereunder is unlimited, but Debentures may be issued only upon and subject to the conditions and limitations herein set forth.

**Section 2.02 - Issuable in Classes and Series.** Debentures may be issued in three different classes as herein provided. The classes shall be designated as "Class A Debentures", "Class B Debentures", and "Class C Subordinated Debentures" and shall bear such distinguishing letters and numbers as the Trustee may approve. Each class of Debentures may be issued in one or more series. Subject to the provisions hereof, the Debentures of any series (other than the Series 88-1 Class A Debentures and Series 88-1 Class C Subordinated Debentures the attributes of which are set out in this indenture) shall bear such date or dates and mature on such date or dates, shall bear interest at such rate or rates, may be issued in such denominations, may be redeemable before maturity in such manner and subject to payment of such premium, or without premium, may be payable as to principal, interest and premium, if any, at such place or places, may provide for such sinking fund, if any, may contain such provisions for the interchange or transfer of Debentures of different denominations, may have attached thereto and/or issued therewith warrants entitling the holders to subscribe for or purchase shares or other securities of the Company upon such terms, may provide for early maturity at the option of either the Company or the holders thereof, may give the holders thereof the right to convert the same into shares or other securities of the Company upon such terms and may have such other attributes and contain such other provisions, not inconsistent with the provisions of this indenture, as may be determined by resolution of the directors passed at or prior to the time of issue thereof and expressed in an indenture supplemental hereto providing for the issuance of the Debentures of such series and (to such extent as the directors may deem appropriate) in the Debentures of such series. At the option of the Company the maximum principal amount of Debentures of any series may be limited, such limitation to be expressed in the supplemental indenture providing for the issuance of the Debentures of such series and/or in the Debentures of such series.

**Section 2.03 - Denominations and Form of Debentures.**

(1) The Debentures of any series may be of different denominations and forms (either coupon Debentures registrable as to principal only or fully registered Debentures or both) and may contain such variations of tenor and effect, not

inconsistent with the provisions of this indenture, as are incidental to such differences of denomination and form including variations in the provisions for the exchange of Debentures of different denominations or forms and in the provisions for the registration or transfer of Debentures and, subject to the provisions hereof as to the Series 88-1 Class A Debentures and Series 88-1 Class C Subordinated Debentures, any series of Debentures may consist of Debentures having different dates of issue, different dates of maturity, different rates of interest and/or different redemption prices, if any, and/or different sinking fund provisions, if any, and/or partly of Debentures carrying the benefit of a sinking fund and partly of Debentures with no sinking fund provided therefor and may give the holders thereof such right, if any, to convert the same into shares or other securities of the Company or any other Person and may entitle the holders thereof to such guarantees or security and may have, such other differences in attributes, not inconsistent with the provisions of this indenture, as may be determined by the directors.

(2) Subject to the foregoing provisions and subject to any limitation as to the maximum principal amount of Debentures of any particular series, any of the Debentures may be issued as part of any series of Debentures previously issued, in which case they shall bear the same designation and designating letters as have been applied to such similar prior issue and shall be numbered consecutively upwards in respect of each denomination of Debentures in like manner and following the numbers of the Debentures of such prior issue.

(3) Any series of Debentures (other than the Series 88-1 Class A Debentures and Series 88-1 Class C Subordinated Debentures) which may at any time be issued hereunder and the coupons (if any) appertaining thereto and the certificate of the Trustee endorsed on such Debentures may be in such form or forms as the directors shall by resolution determine at the time of the first issue of any series or part of a series of such Debentures and as shall be approved by the Trustee whose approval shall be conclusively evidenced by the certification thereof.

(4) The Debentures of any series may be engraved, lithographed, printed, mimeographed or typewritten, or partly in one form and partly in another, as the Company may determine.

**Section 2.04 - Signature of Debentures.** All Debentures shall be under the corporate seal of the Company or a facsimile or reproduction thereof (which shall be deemed to be the seal of the Company) and shall be signed (either manually or by facsimile signature) by two directors of the Company or by such other form of execution as may be prescribed in a certified resolution of the Company delivered to the Trustee. Interest coupons attached

to coupon Debentures shall have reproduced thereon the facsimile signatures of two directors of the Company. A facsimile signature upon any of the Debentures and/or coupons shall for all purposes of this indenture be deemed to be the signature of the person whose signature it purports to be and to have been signed at the time such facsimile signature is reproduced and, notwithstanding that any person whose signature, either manual or in facsimile, may appear on the Debentures is not at the date of this indenture or at the date of the Debentures or at the date of the certifying and delivery thereof, a director of the Company, such Debentures or coupons shall be valid and binding upon the Company and entitled to the security of this indenture.

#### **Section 2.05 - Certification.**

(1) No Debenture shall be issued or, if issued, shall be obligatory, or shall entitle the holder to the benefit of the security hereby created, until it has been certified by or on behalf of the Trustee substantially in one of the forms set out in Schedules A or B hereto or in some other form approved by the Trustee, whose approval shall be conclusively evidenced by the certification thereof. Such certification on any Debenture shall be conclusive evidence that such Debenture has been duly issued, is a valid obligation of the Company and that the holder thereof is entitled to the benefit thereof and of this indenture.

(2) The certification of the Trustee signed on the Debentures and/or interim Debentures hereinafter mentioned shall not be construed as a representation or warranty by the Trustee as to the validity of this indenture or of the said Debentures or their issuance and the Trustee shall in no respect be liable or answerable for the use made of the said Debentures or the proceeds thereof. The certificate of the Trustee signed on the said Debentures and/or interim Debentures shall however be a representation and warranty by the Trustee that said Debentures and/or interim Debentures have been duly certified by or on behalf of the Trustee pursuant to the provisions of this indenture.

#### **Section 2.06 - Commencement of Interest.**

(1) The coupons for interest, if any, matured at the date of delivery by the Trustee of coupon Debentures issued hereunder shall be detached from the same and cancelled before delivery unless such Debenture is being issued in exchange or in substitution for another Debenture and such matured coupons represent unpaid interest to which the holder of such exchanged or substituted Debenture is entitled.

(2) All fully registered Debentures issued hereunder, whether issued originally or upon exchange or in substitution for previously issued Debentures, shall bear interest from their

dates or from the last interest payment date to which interest shall have been paid or made available for payment on the outstanding Debentures of the same series and same date of maturity, whichever shall be the later.

#### **Section 2.07 - Interim Debentures.**

(1) Pending the preparation and delivery to the Trustee of definitive Debenture certificates of any series, or part of a series the Company may execute in lieu thereof (but subject to the same provisions, conditions and limitations as herein set forth) and the Trustee may certify interim printed, mimeographed or typewritten Debentures with or without coupons, in such form and in such denominations as may be approved by the Trustee and the directors of the Company (whose certification or signature, either manual or in facsimile, on any such interim Debentures shall be conclusive evidence of such approval) entitling the holders thereof to definitive Debentures of such series or part of a series in any authorized denominations and forms when the same are prepared and ready for delivery, without expense to the holders, but the total amount of interim Debentures of any series or part of a series so issued shall not exceed the total amount of Debentures of such series or part of series for the time being authorized. Forthwith after the issuance of any such interim Debentures the Company shall cause to be prepared the appropriate definitive Debentures for delivery to the holders of such interim Debentures.

(2) Any such interim Debentures when duly issued shall, until exchanged for definitive Debentures, entitle the holders thereof to rank for all purposes as Debenture holders and otherwise in respect of this indenture to the same extent and in the same manner as though the said exchange had actually been made. When exchanged for definitive Debentures such interim Debentures shall forthwith be cancelled by the Trustee. Any interest paid upon interim Debentures without coupons shall be noted thereon by the Company, the Trustee or any paying agent at the time of payment unless paid by warrant or cheque to the registered holder thereof.

**Section 2.08 - Ranking of Debentures.** The Class A Debentures, the Class B Debentures and the Class C Subordinated Debentures shall have such preferences and priorities in relation to one another as set out in Article Five.

#### **Section 2.09 - Registration and Transfer of Debentures.**

(1) Coupon Debentures shall be negotiable and title thereto shall pass by delivery unless registered for the time being in the name of the holder as hereinafter provided. Any such registration of a coupon Debenture as to principal only shall not affect the negotiability of the coupons, the title of



which shall always be transferable by delivery and payable to bearer.

(2) The Company shall cause to be kept by and at the principal office of the Trustee in the City of Toronto and in such other place or places and/or by such other registrar or registrars (if any) as the Company may from time to time designate, registers in which the holder or holders of any coupon Debentures may register the same as to principal only, such registration to be noted on such Debentures. The name and address of each holder of Debentures so registered and particulars of the Debentures held by him shall be entered in the register in which such Debentures are registered. After such registration of a Debenture as to principal only, no transfer thereof shall be valid unless made on one of such registers by the registered holder or his executors or administrators or other legal representatives, or his or their attorney duly appointed by an instrument in writing in form and execution satisfactory to the Trustee upon compliance with such reasonable requirements as the Trustee and/or other registrar may prescribe, and unless such transfer shall have been noted on such Debenture by the Trustee or other registrar, but any coupon Debenture registered as to principal only may be discharged from registry by being transferred to bearer, after which it shall again be transferable by delivery and may again and from time to time be registered and discharged from registry.

(3) The Company shall also cause to be kept by and at the principal office of the Trustee in the City of Toronto, and in such other place or places and/or by such other registrar or registrars (if any) as the Company may from time to time designate, registers in which shall be entered the names and addresses of the holders of fully registered Debentures and particulars of such Debentures held by them respectively and of all transfers of fully registered Debentures. No transfer of a fully registered Debenture shall be valid unless made on one of such registers by the registered holder or his executors or administrators or other legal representatives or his or their attorney duly appointed by an instrument in writing in form and execution satisfactory to the Trustee and upon compliance with such requirements as the Trustee and/or other registrar may prescribe, nor in the case where a new Debenture is or Debentures are issued upon such transfer, unless such transfer shall have been noted on such Debenture by the Trustee or other registrar.

(4) The registers referred to in this Section 2.09 shall at all reasonable times be open for inspection by the Trustee, the Company and any Debenture holder.

(5) The registers of fully registered Debentures may be closed for a period not exceeding 10 Banking Days immediately preceding any date upon which interest on such Debentures is

payable. The registers of Debentures, whether of fully registered Debentures or of Debentures registered as to principal only, may be closed on the day of any selection by the Trustee of Debentures to be redeemed or converted and during the 10 preceding Banking Days.

(6) The Company shall have power at any time to close any register upon which the registration of any Debenture appears, except the registers maintained at the City of Toronto, and in that event it shall transfer the records thereof to another existing register or other existing registers, or to a new register, and thereafter Debentures previously registered on such closed register shall be deemed to be registered on such other existing or new register, as the case may be. Prior notice of the closing of any register shall be given, in the manner provided in Section 15.03, to the holders of Debentures registered in the said register so closed.

(7) The registered holder of a registered Debenture, whether fully registered or registered as to principal only, shall be entitled to have such Debenture transferred at any of the places at which a register is kept for such Debenture pursuant to the provisions of this Section 2.09 under such reasonable regulations as the Trustee may prescribe.

(8) The registered holder of a registered Debenture, whether fully registered or registered as to principal only, may at any time or from time to time have the registration of such Debenture transferred from the register in which the registration thereof appears to another register maintained in another place authorized for that purpose under the provisions of this indenture upon payment of a reasonable fee to be fixed by the Trustee.

(9) Neither the Company nor the Trustee nor any registrar shall be required (i) to transfer or exchange fully registered Debentures for a period of 10 Banking Days next preceding any interest payment date; or (ii) to transfer or exchange any Debentures on the day of any selection by the Trustee of Debentures to be redeemed or during the 10 preceding Banking Days; or (iii) to transfer or exchange any Debentures selected or called for redemption in whole or in part.

(10) Every registrar shall, when requested so to do by the Company or the Trustee, furnish the Company or the Trustee, as the case may be, with a list of the names and addresses of the holders of registered Debentures on the registers maintained by such registrar and showing the principal amount and serial numbers of Debentures held by each such holder.

#### **Section 2.10 - Issue in Substitution for Lost Debenture.**

(1) If a Debenture or coupon becomes mutilated or is lost, destroyed or stolen, the Company shall issue and thereupon the Trustee shall certify and deliver a new Debenture or coupon of like date and tenor upon surrender and cancellation of the

mutilated Debenture or, in the case of a lost, destroyed or stolen Debenture, in lieu of and in substitution for the same; and the substituted Debenture or coupon shall be in a form approved by the Trustee and shall be entitled to the benefit hereof to the same extent as the same which it replaces.

(2) The applicant for a new Debenture or coupon pursuant to this Section 2.10 shall bear all expenses incidental to the issuance thereof and in case of loss, destruction or theft shall, as a condition precedent to the issue thereof, furnish to the Company and to the Trustee such reasonable evidence of ownership and of loss, destruction or theft of the Debenture so lost, destroyed or stolen as shall be satisfactory to the Company and to the Trustee in their discretion and shall furnish indemnity satisfactory to them in their discretion and, in any case, such applicant shall pay the reasonable charges of the Company and the Trustee in connection with the issuance of such substituted Debenture or coupon.

#### **Section 2.11 - Pledge of Debentures.**

(1) Provided that there is not a default hereunder any of the Class B Debentures (and no other class of Debentures) may be lodged, deposited, pledged, charged, assigned or transferred from time to time by the Company as collateral security for the payment and performance of all or any part of the present and future indebtedness, liabilities and obligations of the Company to any Person or Persons in respect of any Put Obligation. In such event, the Debenture shall not be deemed to have been redeemed by reason of there being no such indebtedness, liabilities or obligations at any time while the Debenture remains so lodged, deposited, pledged, charged, assigned or transferred, and no payment shall reduce the amount owing or payable under the Debenture unless specifically appropriated to and noted thereon by the holder thereof at the time of such payment.

(2) When such Class B Debentures are redelivered to the Company or its nominees on or without payment, upon the satisfaction, release or discharge in whole or in part of any such indebtedness, liabilities or obligations, such Debentures shall be deemed to have been redeemed.

#### **Section 2.12 - Class B Debentures may only be Pledged.**

Class B Debentures may only be issued hereunder for the purpose of the Company pledging such Debentures in accordance with section 2.11 as collateral security.

#### **Section 2.13 - Ownership of Debenture.**

(1) The Person in whose name any registered Debenture is registered shall for all the purposes of this indenture be deemed to be the owner thereof.

(2) The Company and the Trustee may deem and treat the bearer of any unregistered Debenture and the bearer of any coupon for interest on any coupon Debenture, whether such Debenture shall be registered as to principal or not, as the absolute owner of such Debenture or coupon, as the case may be, for all purposes of this indenture, and neither the Company nor the Trustee nor any registrar shall be affected by any notice to the contrary.

#### **Section 2.14 - No Notice of Trusts.**

Subject to applicable law, the Company and/or the Trustee and/or any registrar for any of the Debentures shall not be charged with notice of or be bound to see to the execution of any trust (other than that created by this Trust Indenture), whether express, implied or constructive, in respect of any Debentures, and the Trustee may transfer the same on the direction of the Person registered as the holder thereof, whether named as trustee or otherwise, as though that Person were the beneficial owner thereof.

#### **Section 2.15 - Persons Entitled to Payment.**

(1) The person in whose name any registered Debenture is registered shall be deemed the owner thereof for the purpose of receiving payment of or on account of the principal of and premium (if any) on such Debenture and, in the case of a fully registered Debenture, interest thereon shall be made only to or upon the order in writing of the registered holder for the time being of such Debenture, and such payment shall be a good and sufficient discharge to the Company, the Trustee, any registrar and any paying agent for the amounts so paid.

(2) In the case of fully registered Debentures, as the interest on such Debentures matures (except interest payable at maturity or on redemption which shall be paid on presentation and surrender of such Debentures for payment or conversion), the Company shall forward or cause to be forwarded by prepaid post, prior to the date on which such interest becomes due, to the holder for the time being, or, in the case of joint holders, to such joint holder whose name appears first on the appropriate register hereinbefore mentioned, a cheque on the Company's bankers for such interest (less any tax required to be deducted), payable to the order of such registered holder or holders and negotiable at par at each of the places at which interest upon such Debentures is payable. The forwarding of such cheque shall satisfy and discharge the liability of the Company for the interest upon such Debentures to the extent of the sums represented thereby (plus the amount of any tax deducted as aforesaid) unless such cheque be not paid on presentation, provided that in the event of non-receipt of such cheque by such registered holder or the loss or destruction thereof the Company, upon being furnished with reasonable evidence of such non-receipt, loss or destruction and with indemnity reasonably

satisfactory to it, shall issue or cause to be issued to such registered holder a replacement cheque for the amount of such cheque.

(3) The Company, the Trustee, any registrar and any paying agent may deem and treat the bearer of any unregistered Debenture and the bearer of any coupon for interest on any coupon Debenture, whether such Debenture shall be registered as to principal or not, as the absolute owner of such Debenture or coupon, as the case may be, for the purpose of receiving payment thereof or on account thereof, and the Company, the Trustee, any registrar and any paying agent shall not be affected by any notice to the contrary.

(4) The registered holder for the time being of any registered Debenture and the bearer for the time being of any unregistered Debenture and the bearer of any interest coupon shall be entitled to the principal moneys, premium (if any) and interest evidenced by such instruments respectively, free from all equities or rights of set-off or counterclaim between the Company and the original or any intermediate holder thereof, and all Persons may act accordingly and a transferee of a registered Debenture shall, after the appropriate form of transfer is lodged with the Trustee or any registrar and upon compliance with all other conditions in that behalf required by this indenture or with any conditions contained in such Debenture or imposed by law, be entitled to be entered on any one of the appropriate registers as the owner of such Debenture free from all equities or rights of set-off or counterclaim between the Company and his transferor or any previous holder thereof, save in respect of equities of which the Company is required to take notice by statute or by order of a court of competent jurisdiction.

(5) Where registered Debentures are registered in more than one name, the principal moneys, premium (if any) and interest (in the case of fully registered Debentures) from time to time payable in respect thereof may be paid by cheque payable to the order of all of the registered holders thereof, failing written instructions from them to the contrary, and the receipt of either or any of such registered holders, shall be a valid discharge of the Company, the Trustee, any registrar and any paying agent.

(6) Notwithstanding the foregoing, if the Company shall have entered into an agreement with the holder of any Debenture with respect to the place and manner of payment of principal and interest on that Debenture, then payment shall be made as provided in the said agreement.

#### **Section 2.16 - Exchange of Debentures.**

(1) Debentures of any denomination may be exchanged for Debentures of any other authorized denomination or denominations and coupon Debentures may likewise be exchanged for fully registered Debentures and vice versa, any such exchange to be for

an equivalent aggregate principal amount of Debentures of the same series, carrying the same terms and conditions. Exchanges of Debentures may be made at the offices of the Trustee or any registrar where a register is maintained for the Debentures pursuant to the provisions hereof. Any Debentures tendered for exchange shall be surrendered, together with all unmatured coupons (if any) appertaining thereto, to the Trustee or appropriate registrar. All Debentures and coupons surrendered for exchange shall be cancelled.

(2) Debentures issued in exchange for Debentures which at the time of such issue have been selected or called for redemption at a later date shall be deemed to have been selected or called for redemption in the same manner and shall have noted thereon a statement to that effect.

(3) Except as herein otherwise provided, for every exchange of Debentures of any denomination or form for other Debentures and for any registration of Debentures as to principal and for any discharge from such registration and for any transfer of Debentures (other than an exchange of interim Debentures for definitive Debentures or the initial registration of definitive Debentures issued in exchange for Debentures) the Trustee or any registrar may make a sufficient charge to reimburse it for any stamp tax or other governmental charge required to be paid, and in addition a reasonable charge for its services for each Debenture exchanged, registered, transferred or discharged or issued as a result thereof. Payment of the said charges shall be made by the party requesting such exchange, registration, discharge or transfer as a condition precedent thereto.

**ARTICLE THREE****ISSUE AND DELIVERY OF DEBENTURES****Section 3.01 - Terms of Series 88-1 Class A Debentures.**

(1) The first series of Class A Debentures to be issued hereunder shall consist of and be limited to Debentures in the aggregate principal amount of \$15,000,000 and shall be designated "Series 88-1 Class A Debentures". Such Debentures shall be issuable only as fully registered Debentures in denominations of a minimum of \$150,000 and with no set multiples thereafter, shall be substantially in the form set out in Schedule A and shall bear such distinguishing letters and numbers as the Trustee may approve.

(2) The Series 88-1 Class A Debentures shall be dated as of September 20, 1988, shall mature on October 1, 2003 and shall bear interest from September 20, 1988 at the rate of 12% per annum (both before and after demand, default and judgment with interest on overdue interest at the same rate), accruing from day to day and compounded half-yearly, on the principal amount thereof remaining unpaid from time to time, and payable, without adjustment for advance payment of interest, on April 1, 1989 (the payment on such date to be composed of interest accrued from the date of issue to October 1, 1988 plus one-half year's interest from October 1, 1988 to April 1, 1989), on October 1, 1989 (the payment on such date to be one-half year's interest) and thereafter half-yearly on April 1 and October 1 of each year.

(3) The Series 88-1 Class A Debentures are subject to redemption in accordance with Article Four of this indenture.

(4) Subject to the provisions of Section 2.13, the Series 88-1 Class A Debentures may be assigned in whole or in part by the holders thereof at any time in their sole discretion.

**Section 3.02 - Terms of Series 88-1 Class C Subordinated Debentures**

(1) The first series of Class C Subordinated Debentures to be issued hereunder shall consist of and be limited to Debentures in the aggregate principal amount of \$15,000,000 and shall be designated "Series 88-1 Class C Subordinated Debentures". Such Debentures shall be issued only as fully registered Debentures in denominations of a minimum of \$150,000 and no set multiples, shall be substantially in the form set out in Schedule B and shall bear such distinguishing letters and numbers as the Trustee may approve.

(2) The Series 88-1 Class C Subordinated Debentures shall be dated as of September 21, 1988, shall mature on October 1, 2013, and shall bear interest on the unpaid principal amount thereof from September 21, 1988 at the rate of 9.75% per annum (both before and after demand, default and judgment with interest on overdue interest at the same rate) accruing from day to day and calculated and compounded half-yearly on April 1 and October 1 of each year, on the principal amount thereof remaining unpaid from time to time. Such interest shall be payable to the extent of two per cent per annum payable half-yearly in arrears on April 1, 1989 (the payment on such date to be composed of the two percent per annum rate applied from September 21, 1988 to April 1, 1989), on October 1, 1989 (the payment on such date to be composed of the two percent per annum rate applied for one half-year) and thereafter half-yearly on April 1 and October 1 of each year. The balance of all accrued and unpaid interest shall be paid on October 1, 2013.

(3) Provided that no default has occurred and is continuing, the Company shall prepay all or any part of the accrued and unpaid interest on the Series 88-1 Class C Subordinated Debentures to the extent that the Company has funds available to do so, provided that (a) there are no preferred shares of the Company outstanding, and (b) the Trustee has received certificates, similar to the certificates required under Section 3.03(3)(c) with respect to the New Issue Tests, certifying that after giving effect to such payment (together with a hypothetical payment of \$1,000,000 made at the same time) the New Issue Tests are met as calculated at the date of the certificates.

(4) The Series 88-1 Class C Subordinated Debentures are subject to retraction in accordance with Article Four of this indenture.

(5) Subject to the provisions of Section 2.13, the Series 88-1 Class C Subordinated Debentures may be assigned in whole or in part by the holders thereof at any time in their sole discretion.

#### **Section 3.03 - Issuance of Additional Debentures.**

(1) The directors of the Company may from time to time authorize the creation of one or more subsequent series of any Class A Debentures, Class B Debentures or Class C Subordinated Debentures hereunder. The Debentures of any such subsequent series (herein sometimes referred to as "additional Debentures") may be limited to such aggregate principal amount, bear such date or dates, mature on such date or dates, bear such rate or rates of interest, be redeemable at such prices or retractable at such price or prices and contain such other terms or provisions not inconsistent with this indenture as the directors may determine.



(2) Before the issue of any additional Debentures the Company shall execute and deliver to the Trustee an indenture supplemental hereto for the purpose of establishing the terms thereof and the forms and denominations in which they may be issued, together with a certified resolution authorizing the same, and the Trustee shall execute and deliver such supplemental indenture pursuant to Article Fourteen.

(3) The Trustee shall certify and deliver to or to the order of the Company, additional Debentures, upon receipt by the Trustee of the following:

- (a) a certified resolution authorizing the issue of and requesting the certification and delivery of a specified principal amount of additional Debentures;
- (b) a certificate of the Company that it is not in default hereunder and that it has complied with all requirements of this indenture, and of any other instrument providing for the issuance of debt obligations of the Company, in connection with the issue of additional Debentures of which certification is requested;
- (c) such reports and certificates, if any, as may be required by any provision hereof to evidence compliance with any covenant restricting the issuance of Debentures hereunder including, in relation to the issue of additional Class A Debentures or Class B Debentures, the report and certificates in relation to the New Issue Tests referred to in Section 8.02(8);
- (d) a written order of the Company for the certification and delivery of such additional Debentures; and
- (e) an opinion of Counsel dated the date of such certification and delivery to the effect that:
  - (i) the indenture supplemental hereto has been duly and validly authorized, executed and delivered by the Company and is valid and binding upon and enforceable against the Company;
  - (ii) all conditions precedent provided for in this indenture relating to the authorization, execution, certification and delivery of the additional Debentures have been complied with; and

- (iii) the additional Debentures have been duly and validly authorized, executed and delivered by the Company and upon certification and delivery thereof by the Trustee, will be valid and legally binding obligations of the Company entitled to the benefits of this indenture in accordance with their and its terms;

provided that such opinion may be expressed to be subject to any applicable bankruptcy or insolvency laws or other laws affecting the enforcement of creditors' rights and in giving such opinion, Counsel may rely on such statements or certificates of fact as may be necessary.

(4) The Trustee shall not be bound to make inquiry or investigation as to the correctness of the matters set forth in any of the resolutions, opinion, certificates or other documents required by the provisions hereof. The Trustee may rely upon any such resolutions, opinion, certificates, or other documents, but may in its discretion require additional evidence before acting or relying thereon.

(5) No additional Class A Debentures or Class B Debentures shall be certified and delivered on an original issue hereunder if at the time of such certification and delivery, to the knowledge of the Trustee, a default has occurred and is continuing.

**Section 3.04 - Limitations.** In addition to any other restrictions contained in this indenture, the directors of the Company shall be limited with respect to the issuance of any additional Debentures as provided in this Section.

- (1) **Class C Subordinated Debentures.** The terms of any additional series of Class C Subordinated Debentures shall be restricted in the following manner:

- (a) there shall be no provisions allowing for the payment of any interest except in a manner consistent with the provisions of the Series 88-1 Class C Subordinated Debentures;
- (b) no series shall provide for a date of maturity earlier than the date of maturity of the Series 88-1 Class C Subordinated Debentures; and
- (c) no series shall provide for the conversion of such Debentures into any other class.

- (2) Class B Debentures. The terms of any series of Class B Debentures shall be restricted in the following manner:
- (a) no series shall bear interest except on amounts in default; and
  - (b) no series shall provide for conversion into any other class of Debentures.
- (3) Redemption and Retraction. All additional Debentures shall be subject to redemption and retraction in accordance with the provisions of Article Four.

## ARTICLE FOUR

### REDEMPTION AND RETRACTION

#### Section 4.01 - General.

(1) The Company shall have the right at its option in the manner and subject to the terms and conditions provided in this Article to redeem prior to their maturity the whole of or from time to time any part of the principal amount of any series of any class of Debentures upon payment of the principal amount or part thereof to be redeemed plus in each case unpaid interest accrued thereon to the date fixed for redemption, with or without premium or penalty as hereinafter provided, the whole constituting the redemption price. In addition, the holder of a Class C Subordinated Debenture shall have the right at its option in the manner and subject to the terms and conditions provided in this Article to require the Company to retract any Class C Subordinated Debenture held by it by payment of the principal amount or part thereof to be retracted plus in each case unpaid interest accrued thereon to the date fixed for retraction, with or without premium or penalty, the whole constituting the retraction price.

(2) Notwithstanding anything in this Article to the contrary, the Company shall not redeem any portion of the principal amount of any Debenture (with the exception of mandatory redemptions under Sections 4.02(2) and 4.02(3)) unless there are no preferred shares of the Company outstanding.

#### Section 4.02 - Redemption of Class A Debentures.

(1) Optional Redemption. Subject to Section 8.02(8), at any time when there is not a default hereunder and there are no preferred shares of the Company outstanding, the Company may, at its option, redeem any series of the Class A Debentures (in whole or in part). The redemption price for each Class A Debenture to be redeemed shall be calculated as of the Banking Day prior to the date fixed for redemption and shall be the greater of:

- (a) 103% of the unpaid principal amount of such Class A Debenture plus any accrued and unpaid interest thereon to the date fixed for redemption; or
- (b) an amount equal to the present value of all future interest and principal payments on such Class A Debenture, such present value to be determined by discounting each future payment to the date fixed for redemption by a rate equal to the aggregate of 0.375% and the Canada Bond Rate (determined in respect of all such payments)

calculated on the Banking Day immediately preceding the date fixed for redemption.

(2) Mandatory Redemption. Upon the occurrence of an Early Termination of or disposition by the Company of any Related Lease the Company shall redeem the related series of Class A Debentures (in whole only). The redemption price for each Class A Debenture to be redeemed shall be the greater of:

- (a) 103% of the unpaid principal amount of such Class A Debenture plus any accrued and unpaid interest thereon to the date fixed for redemption; or
- (b) an amount equal to the present value of all future interest and principal payments on such Class A Debenture, such present value to be determined by discounting each future payment to the date fixed for redemption by a rate equal to the aggregate of 0.375% and the Canada Bond Rate as calculated on the Banking Day immediately preceding the date fixed for redemption.

The date fixed for redemption shall, under no circumstances, be later than 60 days following the Early Termination.

(3) Mandatory Partial Redemption. Upon receipt by the Company of any moneys due to the occurrence of a Casualty Occurrence with respect to any Related Lease, the Company shall redeem and prepay a principal amount of the related series of Class A Debentures which bears the same proportion to the aggregate outstanding principal amount of the related series of Class A Debentures as the purchase price of those units of Eligible Equipment which have suffered a Casualty Occurrence for which the Company is receiving money bears to the aggregate purchase price of all of the Eligible Equipment then subject to the Related Lease (such redemption to be done on a pro rata basis among all holders of the related series of Class A Debentures) by payment of a redemption price equal to the aggregate of:

- (a) the pro rata principal amount of such Class A Debentures to be redeemed plus any accrued and unpaid interest thereon to the date fixed for redemption; and
- (b) an amount equal to 3% of the principal amount in (a).

The date fixed for redemption shall, under no circumstances, be later than 60 days following the receipt of such moneys by the Company.

(4) Normal Course Redemption. In addition to the foregoing, each series of Class A Debentures shall be redeemable in accordance with their terms.

(5) Series 88-1 Class A Debentures. The Series 88-1 Class A Debentures shall be redeemed on the dates and in the amounts set out in the following schedule (where there is more than one holder of such Debentures the redemptions shall be on a pro rata basis):

<u>Date</u>	<u>Amount</u>
April 1, 1997	\$500,000
October 1, 1997	\$500,000
April 1, 1998	\$500,000
October 1, 1998	\$500,000
April 1, 1999	\$1,250,000
October 1, 1999	\$1,250,000
April 1, 2000	\$1,250,000
October 1, 2000	\$1,250,000
April 1, 2001	\$1,250,000
October 1, 2001	\$1,250,000
April 1, 2002	\$1,250,000
October 1, 2002	\$1,250,000
April 1, 2003	\$1,250,000
October 1, 2003	\$1,750,000

To the extent that there has been any partial redemptions under Section 4.02(1), the amounts in the above schedule shall be adjusted by decreasing the last scheduled amounts by the principal amount of such partial redemptions. To the extent that there has been any partial redemptions under Section 4.02(3), the amounts then remaining in the above schedule shall be adjusted by applying the principal amount paid in respect of such partial redemptions to reduce such above amounts thereafter falling due pro rata in proportion to the amount of each such above amount thereafter falling due.

Section 4.03 - Redemption of Class B Debentures. In no event shall any Class B Debentures be redeemable at any time earlier than the maturity date provided in each such Debenture.

Section 4.04 - Redemption of Class C Subordinated Debentures. In no event shall any Class C Subordinated Debentures be redeemable at any time earlier than the maturity date provided in each such Debenture except as expressly provided for under this indenture.

Section 4.05 - Retraction of Class C Subordinated Debentures. Provided there is no default under this indenture, and there are no issued and outstanding Class A Debentures, Class B Debentures, or preferred shares of the Company or any Indebtedness used to finance the Company's purchase of Eligible

Equipment with respect to which the Company had a commitment from CN or a Canadian "A" Corporate to enter into a Lease Agreement, a holder of Class C Subordinated Debentures shall have the right at its option to require the Company to retract such holder's Class C Subordinated Debentures at such time. The retraction price shall be equal to the principal amount of the Class C Subordinated Debentures so retracted plus any accrued and unpaid interest (simple and compound) thereon to the date fixed for retraction. Under no circumstances shall any retraction under this Section 4.05 occur prior to October 1, 2003.

**Section 4.06 - Partial Redemption of Debentures.**

If less than all of a particular series of any class of Debentures are to be redeemed, the Company shall in each case, at least 15 Banking Days before the date upon which the notice of redemption is required to be given, notify the Trustee in writing of its intention to redeem Debentures so to be redeemed. The Debentures so to be redeemed shall be on a pro rata basis in accordance with the principal amount of Debentures registered in the name of each holder. The holder of any Debenture called for redemption in part only, upon surrender of such Debenture for payment as required by Section 4.11, shall be entitled to receive, without expense to such holder, one or more new Debentures for the unredeemed part of the Debenture so surrendered, and the Trustee shall certify and deliver such new Debenture or Debentures upon receipt of the Debenture so surrendered.

**Section 4.07 - Notice of Redemption.** Not more than 60 days nor less than 21 days prior to the redemption date, an irrevocable notice of intention to redeem all or part of any Debentures shall be given in the manner provided in Article Fifteen by or on behalf of the Company to the holders of such Debentures. Every notice of redemption shall identify the Debentures so called for redemption, shall specify the redemption date, if a partial redemption the amount thereof, the method of calculation of the redemption price and, if calculable at that date, the redemption price, and the place or places of payment, and shall state that all interest thereon shall cease from and after the said redemption date.

**Section 4.08 - Notice of Retraction.** Not more than 60 days nor less than 30 days prior to the retraction date, an irrevocable notice of retraction of all or any part of the Class C Subordinated Debentures shall be given by the holders thereof to the Company in the manner provided in Article Fifteen. Every notice of retraction shall identify the Class C Subordinated Debentures to be called for retraction and shall specify the retraction date. Upon receipt of such notice, the Company shall within 10 days give notice to such holders of Class C Subordinated Debentures in the manner provided in Article Fifteen. Such notice shall specify the retraction price and the place or places of payment, shall confirm the identity of

Debentures subject to retraction and the retraction date and shall state that all interest thereon shall cease from and after the said retraction date.

**Section 4.09 - Debentures Due on Redemption or Retraction Dates.**

Notice having been given as aforesaid, all the Debentures so called for redemption or retraction shall on the redemption or retraction date be and become due and payable at the redemption or retraction price at any of the places where the principal of such Debentures is expressed to be payable, in the same manner and with the same effect as if it were the date of maturity specified in such Debentures, respectively, anything therein or herein to the contrary notwithstanding, and from and after such redemption or retraction date, if the moneys necessary to redeem such Debentures shall have been deposited as provided in Section 4.10 and the Trustee shall have been furnished with affidavits or other proof satisfactory to it as to the giving of such notices, interest on the said Debentures shall cease.

In case any question shall arise whether any notice has been given as above provided and such deposit made, such question shall be decided by the Trustee, whose decision shall be final and binding upon all parties interested.

**Section 4.10 - Deposit of Redemption or Retraction Moneys.**

The Company shall provide for any redemption or retraction by irrevocably depositing with the Trustee or any paying agent to the order of the Trustee in trust for the holders of the Debentures called for redemption or retraction, on or before the redemption or retraction date specified in such notice, such sums as may be sufficient to pay the redemption or retraction price of such Debentures including accrued and unpaid interest on the Debentures so called for redemption or retraction to the redemption or retraction date. The Company shall also deposit with the Trustee if required by it a sum sufficient to pay any charges or expenses which may be incurred by the Trustee in connection with such redemption or retraction. From the sums so deposited the Trustee shall pay or cause to be paid to the holders of such Debentures so called for redemption or retraction, upon surrender of such Debentures, the redemption or retraction price to which they are respectively entitled on redemption or retraction.

**Section 4.11 - Surrender of Debentures for Cancellation.**

If the principal moneys due upon any Debenture issued hereunder shall become payable by redemption, retraction or otherwise before the date of maturity thereof, the Person presenting such Debenture for payment shall surrender the same for cancellation, the Company nevertheless paying the interest accrued and unpaid thereon. All Debentures so surrendered shall be delivered to the Trustee and shall be cancelled by it and no Debenture shall be issued in substitution therefor.



**Section 4.12 - Purchase of Debentures.**

(1) Except as provided in (2) below, the Company shall not at any time purchase any Debentures in the market, by private contract or otherwise, except by redemption or retraction pursuant to this Article Four.

(2) The Company may purchase (for cancellation only) any Class A Debenture in the market, by private contract or otherwise, provided that:

- (a) the consideration paid for such Class A Debenture is less than the price which would have been payable pursuant to an optional redemption under Section 4.02(1) (as determined at the proposed date of such purchase); and
- (b) the Company has given to the Trustee certificates substantially similar to those required in relation to the issuance of a new series of Debentures (other than Class C Subordinated Debentures) certifying that after giving effect to such purchase, the New Issue Tests are met, assuming the proposed date of purchase to be the date for issuance of a new series of Debentures.

**ARTICLE FIVE****RANKING OF DEBENTURES**

**Section 5.01 - Class C Subordinated Debentures.** The indebtedness payable in respect of or evidenced by any Class C Subordinated Debentures issued pursuant to this indenture including the principal thereof and interest thereon (such indebtedness being hereinafter referred to as "Class C Indebtedness"), shall be subordinate and junior in right of payment, to the extent and in the manner set forth in this Article Five, to the prior payment in full of all indebtedness payable in respect of or evidenced by any Class A Debentures or Class B Debentures issued pursuant to the terms and conditions of this indenture including the principal thereof and interest thereon (such indebtedness being hereinafter referred to as "Class A Indebtedness" and "Class B Indebtedness" respectively), and each Debenture holder by its acceptance thereof agrees to and shall be bound by the provisions of this Article Five.

**Section 5.02 - Class A Debentures and Class B Debentures.** All Class A Debentures and Class B Debentures shall rank pari passu without discrimination, preference or priority whatever may be the actual date or terms of issue of the same respectively.

**Section 5.03 - Series.** Within any class of Debentures, all Debentures of any series shall rank pari passu without discrimination, preference or priority whatever may be the actual date or terms of issue of the same respectively.

**Section 5.04 - Interpretation.**

(1) In this Article, reference to "payment in full" with respect to any Class B Debenture shall mean the deposit by the Trustee in a separate and distinct set of accounts (referred to as the "Class B Fund" in Section 9.12) of sufficient funds such that the Class B Fund is fully funded as that expression is used in Section 9.12(3)(vi).

(2) In the remaining provisions of this Article Five, the term "Senior Indebtedness" shall refer to Class A Indebtedness and Class B Indebtedness in relation to Class C Indebtedness and the term "Subordinated Indebtedness" shall refer to Class C Indebtedness in relation to Class A Indebtedness and Class B Indebtedness.

**Section 5.05 - Payment on Default.** If and whenever at any time or from time to time a default has occurred and is continuing and written notice of such default has been given by or on behalf of one or more Debenture holders or the Trustee to the Company, no payment on account of Subordinated Indebtedness shall be made to the holders thereof and the holders of any Subordinated Indebtedness shall not be entitled to receive any payment or

benefit whatever on account of Subordinated Indebtedness, whether in cash, property or securities or otherwise and in any manner whatsoever, unless and until all Senior Indebtedness shall have been first paid in full or the holders of all Senior Indebtedness shall have consented to such payment on account of the Subordinated Indebtedness.

**Section 5.06 - Payments to be Held in Trust.** If any payment or distribution of assets of the Company shall be received by any holder of Subordinated Indebtedness in respect of the Subordinated Indebtedness in any manner inconsistent with the provisions of this Article Five, then such payment or distribution shall be held by such party in trust (which such parties hereby declare and acknowledge) for the benefit of the holders of Senior Indebtedness and shall be paid over or delivered to the Trustee for application in the manner provided in Article Nine as if such payment or distribution were proceeds arising from the enforcement of any remedy provided for in Article Nine.

**Section 5.07 - Subrogation of Debentures.** Subject to and upon payment in full of the Senior Indebtedness, the holders of Subordinated Indebtedness shall be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distributions of assets of the Company applicable to the Senior Indebtedness to the extent of the prior application thereto of cash, property or securities of the Company which would have been payable or distributable to the holders of Subordinated Indebtedness but for the provisions of this Article Five, until the principal of all of the Debentures and interest and premium, if any, thereon shall be paid in full, and no such payments or distributions of assets of the Company to the holders of Senior Indebtedness which would have been payable or distributable to the holders of Subordinated Indebtedness but for the provisions of this Article Five, shall, for the purposes of such subrogation, as between the Company, its creditors and the holders of Subordinated Indebtedness be deemed to be a payment or distribution of assets by the Company to or for the account of the holders of Senior Indebtedness, it being understood that the provisions of this Article Five are, and are intended, solely for the purposes of defining the relative rights of the Debenture holders.

**Section 5.08 - Rights of Debenture holders.** Nothing contained herein or in the Debentures is intended to or shall impair, as between the Company, its creditors and the Debenture holders, the obligation of the Company, which is absolute and unconditional, to pay to the Debenture holders the indebtedness represented thereby including the principal thereof, the premium or penalty, if any, and the interest thereon, as and when the same shall become due and payable in accordance with their terms, or affect the relative rights of the Debenture holders and creditors of the Company, nor shall anything herein

or therein prevent the Trustee or any Debenture holder from exercising all remedies otherwise permitted by applicable law and this indenture upon default under this indenture.

**Section 5.09 - Subordination Rights not Impaired.** None of the rights of any present or future holder of any Senior Indebtedness or the obligations of the holders of Subordinated Indebtedness or the Trustee under the subordination provisions contained or provided for herein shall at any time or in any way be prejudiced or impaired by any act or failure to act by or on behalf of any such holder of Senior Indebtedness or the Company or any other Person.

**Section 5.10 - Authorization of Debenture holders to Trustee to Acknowledge or Effectuate Subordination.** Each Debenture holder by his acceptance thereof authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination as provided in this Article Five and approves and confirms any such action theretofore taken by the Trustee, and each Debenture holder appoints the Trustee his attorney-in-fact for any and all such purposes.

**ARTICLE SIX**  
**SECURITY**

**Section 6.01 - Floating Charge Security.** For valuable consideration, the receipt whereof is hereby acknowledged, and to secure the due payment of the principal of and interest (including interest on amounts in default) on the Debentures from time to time issued and certified hereunder and all other moneys for the time being and from time to time owing on the security hereof and the due performance of the obligations of the Company herein contained, but subject to the exception specified in section 6.03 and subject to Permitted Liens, the Company hereby creates a security interest in and mortgages, hypothecates, pledges, assigns and charges, as and by way of a first floating charge, to and in favour of the Trustee, its successors and assigns, all of its undertaking, property, rights and assets now owned or hereafter acquired by the Company, of whatsoever nature, kind or description and wherever situate, including, without limitation, all rolling stock now owned or hereafter acquired by the Company. The floating charge hereby created shall in no way hinder or prevent the Company, until the security hereby constituted shall have become enforceable and the Trustee shall have been instructed to enforce the same, from disposing of or dealing with the subject matter of the floating charge in the ordinary course of its business and for the purpose of carrying on the same; provided that such action is not in breach of any specific provision of or covenant in this indenture.

**Section 6.02 - Habendum.** To have and to hold the Mortgaged Property and all rights hereby conferred unto the Trustee, its successors and assigns forever, but in trust nevertheless for the uses and purposes and with the powers and authorities and subject to the terms and conditions herein set forth.

**Section 6.03 - Exception as to the Last Day of any Lease.** The Lien hereof shall not apply to the last day of the term or any extension thereof or any renewal term of any lease or licence or privilege in the nature thereof, whether private or statutory, whether oral or written, or any agreement therefor, now held or hereafter acquired by the Company and the Lien hereof shall be deemed to be by way of sub-lease and sub-licence, as the case may be; provided that should the Lien hereof be enforced by the Trustee, the Company shall stand possessed of each such last day and shall hold the same in trust to assign the same at the direction of the Trustee or any Person who may acquire any such term or renewal term or who in the course of enforcement hereof may be entitled to so direct.

**Section 6.04 - Effective Date of Security.** The Lien hereof shall be effective upon the execution and delivery of this Trust Indenture.

**Section 6.05 - Attachment.** The security interest created hereby is intended to attach to property now owned by the Company when this Trust Indenture is signed by the Company and delivered to the Trustee and is intended to attach to all After-Acquired Property on the date such property is acquired by the Company.

**Section 6.06 - Further Assurances.**

(1) The Company shall, subject as herein provided, forthwith, and from time to time, execute and do or cause to be executed and done all deeds, documents, and things which, in the opinion of Counsel, are necessary or advisable for giving the Trustee (so far as may be possible under the local laws of the places where the Mortgaged Property is situate) a valid floating charge of the nature herein specified upon any undertaking, property, rights, and assets, whether now owned or hereafter acquired, intended to be included therein and a valid cession and transfer thereof for and to secure the payment of all principal moneys and interest for the time being and from time to time owing under this Trust Indenture and the Debentures and all other moneys intended to be secured by this Trust Indenture, and for conferring upon the Trustee such power of sale and other powers over the Mortgaged Property as are hereby expressed to be conferred.

(2) Notwithstanding anything herein contained, the Trustee shall not be bound to take any conveyance, assignment or transfer pursuant hereto of any property, assets or agreements which, in the opinion of the Trustee, are of an onerous character, but the Company shall hold any such property, assets or agreements upon trust for the Trustee.

**Section 6.07 - Registration.**

(1) The Company shall record, file, deposit or register or cause to be recorded, filed, deposited, or registered this indenture (within 21 days of its execution), and all indentures supplemental hereto, and all other instruments of further assurance (including financing statements) without delay, wherever in the opinion of Counsel it would be of material advantage in preserving and protecting the Lien hereof and the rights of the Debenture holders and the Trustee hereunder for such action to be taken, under the provisions of any and all statutes providing for or permitting the registration of floating charges or other security interests in, or in any political subdivision of, Canada or any province of Canada, and any other jurisdiction in which any material amount of the Mortgaged Property is situated or any significant part of the business of the Company is carried on; and the Company shall renew or cause to be renewed such recordings, deposits, filings or registrations from time to time as and when required to keep them in full force and effect; and the Company shall from time to time if and when requested to do so by the Trustee furnish the Trustee with an opinion of Counsel that the provisions of this Section have been complied with.

(2) Notwithstanding anything herein to the contrary, unless a default hereunder has occurred and is continuing, or a Debenture holder's Request is delivered to the Trustee whereby the holders delivering such request, in good faith but otherwise in their sole discretion, deem themselves insecure due to a change of circumstances since the purchase by or pledge to them of their Debentures, or the Trustee in good faith but otherwise in its sole discretion, deems the Debenture holders insecure due to any change of circumstances, no registrations, deposits, filings or recordings relating to the security hereby created will be effected except the following:

- (a) filings, deposits or recordings which may be permitted pursuant to section 86 of the Railway Act (Canada),
- (b) in the Province of Ontario, such registrations, filings and recordings as may be required under the Personal Property Security Act (Ontario) and the Corporation Securities Registration Act (Ontario),
- (c) in the Provinces of Alberta and Quebec, such registrations, deposits, filings and recordings as, in the opinion of Counsel, may be of material advantage in preserving the Lien hereof and the rights of the Debenture holders and the Trustee hereunder, and
- (d) in the United States, such filings, registrations, deposits, or recordings as may be required with the Interstate Commerce Commission.

**Section 6.08 - Defeasance.** Subject to Section 2.11, these presents are upon the express condition that if the Company shall well and truly pay all moneys payable by the Company under all Debentures and shall keep, perform and observe the covenants and agreements in this Trust Indenture agreed to be kept, performed and observed by or on the part of the Company, then these presents and the estate and rights hereby granted shall cease and become utterly null and void and the Mortgaged Property shall revert to and revest in the Company without any release, acquittance, reconveyance, re-entry or other act or formality whatsoever.

**ARTICLE SEVEN**  
**POSSESSION, USE AND RELEASE OF**  
**MORTGAGED PROPERTY**

**Section 7.01 - Possession Until Default.** Until the security hereby constituted shall have become enforceable and the Trustee shall have determined or become bound to enforce the same, the Company shall be permitted, in the same manner and to the same extent as if this Trust Indenture had not been executed but subject to the express terms hereof, to possess, operate, manage, use and enjoy the Mortgaged Property, freely to control the conduct of its business and to take and use the rents, incomes and profits thereof.

**Section 7.02 - Concerning Lease Agreements.**

(1) The Company shall not amend, terminate, cancel, replace, supplement, surrender or waive, or permit or consent to any amendment, termination, cancellation, replacement, supplement, surrender or waiver of, any right or relieve any party of any material obligation (which in the reasonable opinion of the directors of the Company is material), in whole or in part, under any Lease Agreement without the prior written consent of the Trustee.

(2) Unless an Event of Default shall have occurred and be continuing, the Company shall be entitled to exercise all rights, to do or cause to be done all acts and things, and to receive and enforce performance under all Lease Agreements. At any time when an Event of Default has occurred and is continuing, the Trustee shall be entitled to collect and retain, and the Company hereby irrevocably authorizes each other party to any of the Lease Agreements at any time upon request therefor by the Trustee, to pay to the Trustee all sums due and to become due to the Company under any and all Lease Agreements, and the Trustee, to the exclusion of the Company, may exercise any and all rights of the Company, do or cause to be done any and all acts and things, receive and enforce performance thereunder, and adjust and settle all matters relating to the performance thereof, all to the same extent and in the same manner as the Company might if no Event of Default had occurred and is continuing.

(3) If default shall be made in the due performance of any term, condition, covenant, agreement or other obligation contained in any Lease Agreement, the Company shall forthwith give notice of such default to the Lessee under the Lease Agreement and a copy of such notice to the Trustee and the Company may, and upon request therefor by the Trustee shall, at the Company's expense (without prejudice, however, to any right that the Trustee might have as a result of such default), cause, or join with others in causing, appropriate proceedings to be instituted and prosecuted in some court of competent jurisdiction



to enforce payment of the amount due and to collect such amount and/or to enforce the performance or observance of such term, condition, agreement or other obligation; provided, however, that the Company shall not be entitled, without the prior written consent of the Trustee, to exercise the rights provided in this subsection 7.02(3) if an Event of Default has occurred and is continuing.

**Section 7.03 - Discretion of Trustee to Deal With Mortgaged Property.** Whether or not the Lien hereof shall have become enforceable and the Trustee shall have determined or become bound to enforce the same, the Trustee may at any time and from time to time upon the written request of the Company and at the expense of the Company and without any consent of the holders of Debentures, but only if and so far as in the opinion of the Trustee the interests of the holders of Debentures will not be prejudiced thereby, do or concur in doing all or any of the following things:

- (a) permit the Company or any nominee of the Company to receive any of the Mortgaged Property or the documents of title thereto on an undertaking to deal with the same in a specified manner;
- (b) settle, adjust, refer to arbitration, compromise and arrange all accounts, reckonings, controversies, questions, claims and demands whatsoever in relation to any of the Mortgaged Property;
- (c) execute and do all such contracts, deeds, documents and things and bring, defend and abandon all such actions, suits and proceedings in relation to any of the Mortgaged Property for purposes not inconsistent with the provisions of this indenture as may seem expedient; and
- (d) generally act in relation to the Mortgaged Property in such manner and on such terms as to the Trustee may seem expedient in the interests of the holders of the Debentures.

**Section 7.04 - Releases by Trustee.**

(1) Until the security hereby constituted shall have become enforceable and Trustee shall have determined or become bound to enforce the same pursuant to the provisions of this indenture, if the Company shall sell or otherwise dispose of any property or rights at any time comprised in the Mortgaged Property or shall grant rights therein to the extent permitted by this indenture and shall consider it desirable to evidence or confirm the release of such property or rights from the Lien hereof, the Trustee shall execute all such documents and do all such things as the Company may request, without receiving

payment or other consideration, but at the Company's expense, to evidence or confirm the release of such property or rights from the Lien hereof.

(2) The Trustee shall not be required under any of the provisions of this Article Seven to release any part of the Mortgaged Property from the Lien hereof at any time when a default has occurred and is continuing.

(3) The powers, rights and discretions conferred upon the Trustee and the Company by this Article Seven shall be deemed to be several and not dependent on each other and each such power, right or discretion shall accordingly be construed as complete in itself and not by reference to any other such right, power or discretion; and the exercise of any one or more of such powers, rights and discretions, or any combination of them, from time to time, shall not be deemed to exhaust the right of the Trustee or the Company to exercise such powers, rights or discretions or combination of them thereafter from time to time.

(4) Whenever any part of the Mortgaged Property shall be released from the Lien hereof by operation of the provisions of this indenture, the Trustee shall provide to the Company all such releases, discharges and other similar documents as the Company may request for the purposes of giving effect to the same.

**Section 7.05 - Protection of Purchasers.** It is hereby declared and agreed that no purchaser from, or other Person having dealings with, the Company or the Trustee or their respective successors or assigns shall be obliged to enquire into the necessity, expediency, authority or regularity of or for any action or concurrence on the part of the Trustee or any release or other instrument taken or given under the provisions of this Article Seven or be obliged to enquire into the sufficiency of the performance by the Company of any of the conditions upon which it is or may be entitled to any such action or concurrence or release or other instrument.

ARTICLE EIGHT

COVENANTS OF THE COMPANY

**Section 8.01 - General Covenants.** The Company hereby covenants and agrees with the Trustee, for the benefit of the Trustee and the Debenture holders, that the Company will perform and observe each of the following covenants and conditions as applicable:

(1) Authority to Charge. The Company has good right and lawful authority to grant, assign, hypothecate, mortgage, pledge and charge its undertaking, properties, rights, and assets as provided in and by this indenture.

(2) Payment of Principal and Interest. The Company will duly and punctually pay or cause to be paid the principal of and interest (including any interest on amounts in default) on the Debentures on the dates, at the places and in the manner mentioned herein and in the Debentures.

The Company will duly and punctually pay the principal of and the interest on all other Indebtedness heretofore or hereafter incurred or assumed by it when and as the same shall become due and payable, and will faithfully observe, perform, and discharge the covenants, conditions, and obligations which are imposed on it by any and all indentures and other agreements securing or evidencing such Indebtedness or pursuant to which such Indebtedness is issued or outstanding, and will not permit to occur any act or omission which is or may be declared to be a default thereunder; except to the extent and for so long as the Company's obligation to make such payment or to take such action is contested in good faith by it. The Company will forthwith advise the Trustee, in writing, if any Indebtedness of the Company is declared due prior to its express maturity by reason of any default of the Company.

(3) Maintain Corporate Existence. Except as provided in Article Eleven of this indenture, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

(4) Carrying on Business. Subject to the express provisions hereof, the Company will carry on and conduct its business in a proper and efficient manner and will diligently maintain, repair, use, and operate its property and premises in a proper and efficient manner.

(5) Payment of Taxes. The Company will pay or cause to be paid all rents, taxes, rates, levies, and assessments, ordinary or extraordinary, government fees, dues, and other obligations to pay money validly levied, assessed or imposed upon it, or upon the Mortgaged Property or any part thereof as and when the same become due and payable, except to the extent and for so

long as the Company shall contest in good faith its obligation to do so, provided that in such case the Company shall satisfy the Trustee, and, if required, furnish security satisfactory to the Trustee, that any such contestation will involve no forfeiture of any part of the Mortgaged Property and that it will submit to the Trustee, when required, the receipts and vouchers establishing such payment and will duly observe and conform to all valid requirements of any Governmental Body relative to any of the Mortgaged Property and all covenants, terms, and conditions upon or under which any of the Mortgaged Property are held.

(6) Maintenance of Security. Subject to Section 6.07, the Company will fully and effectually maintain and keep maintained the Lien hereof as a valid and effective security at all times so long as any of the Debentures shall be outstanding and will do, observe, and perform or cause to be done, observed, and performed all of its obligations and all matters and things necessary or expedient to be done, observed or performed by virtue of any law, rule or regulation of Canada or of any political subdivision of Canada or any province of Canada or any other Governmental Body for the purpose of creating, performing or maintaining the trusts herein referred to as security for the Debentures and will do, observe, and perform all the obligations hereby imposed upon it.

(7) Currency Risk. The Company agrees to prudently manage its exposure to currency risk, including if appropriate, the use of swaps, options or other financial management tools in order to provide coverage of its obligations to pay principal and interest on any Debenture.

(8) Cash Management. The Company agrees to manage its cash funds in a prudent manner in an effort to ensure that the Company can meet all future obligations to pay principal and interest on any Debenture.

(9) Payment of Trustee's Remuneration. The Company will pay or cause to be paid to the Trustee reasonable remuneration for its services as Trustee hereunder and will repay to the Trustee on demand all moneys which shall have been paid by the Trustee in and about the execution of the trusts hereby created with interest from the date of expenditure until repayment at a rate per annum equal to the Canadian Prime Rate, and such moneys and the interest thereon, including the Trustee's remuneration, shall, until paid by the Company, constitute a charge or lien upon the Mortgaged Property in priority to any of the Debentures or interest on any of the Debentures and shall be payable out of any funds coming into the possession of the Trustee. The said remuneration shall continue to be payable after the security hereof shall become enforceable and until the trusts hereof shall be finally wound up and whether or not a receiver or receiver and manager shall have been appointed or the trusts of this indenture shall be in due course of administration by or

under the direction of a Court.

(10) No Extension of Time for Payment of Interest. In order to prevent any accumulation of payable but unpaid interest on the Debentures, the Company will not directly or indirectly extend or assent to the extension of time for payment of any interest upon any Debentures and will not directly or indirectly be or become a party to or approve any such arrangement by purchasing or funding any interest on any Debentures or in any other manner.

In case the time for the payment of any such interest shall be so extended, whether or not such extension be by or with the consent of the Company, notwithstanding anything herein or in the Debentures contained, such interest shall not be entitled in case of default hereunder to the benefit or security of this indenture except subject to the prior payment in full of the principal of all the Debentures of the same class issued hereunder and outstanding and interest on such Debentures the payment of which has not been so extended.

(11) Performance and Continuance of Contracts and Licenses. So long as any lease, operating agreement, license, concession or other contract or agreement including, without limiting the foregoing, any Lease Agreement in which the Company has any interest or to which the Company is a party is in the opinion of the Company of commercial value, the Company will faithfully observe, perform, and discharge the covenants, conditions, and obligations imposed on it thereby except to the extent and for so long as the Company's obligation to do so is contested in good faith by it, and will do all other things necessary or expedient in order to preserve, protect, maintain, and renew such lease, operating agreement, license, concession or other contract or agreement and all rights of the Company thereunder and under each renewal or replacement thereof. Further, the Company shall forward to the Trustee copies of any notices or other communications received by the Company in relation to any of the aforementioned agreements within 15 days of receipt thereof by the Company.

(12) Information and Reports. The Company will keep and maintain proper books of account and other accounting records in accordance with Generally Accepted Accounting Principles, and will furnish to the Trustee, and to each holder of Debentures which shall so request in writing:

- (i) as soon as available and, in any event, within 45 days after the end of each of the first three fiscal quarters in each of the Company's fiscal years, the balance sheets of the Company as of the close of such quarter, and the related statements of net earnings for each of such quarterly periods and for the periods from the beginning of the then current fiscal year to the

end of such quarterly periods, together with comparative figures for the corresponding periods of the preceding year, all in reasonable detail and accompanied by a certificate of the directors, stating that such statements present fairly the financial position of the Company at the dates thereof and the results of its operations for the periods covered thereby, subject to normal year-end adjustments;

- (ii) as soon as available and, in any event, within 120 days after the end of each of the Company's fiscal years, the balance sheets of the Company as at the end of such year, and the related statements of net earnings and changes in financial position for such year, together with comparative figures for the immediately preceding year, all in reasonable detail and accompanied by the opinion thereon of the Auditors, which opinion shall not be qualified by reason of any limitation imposed by the Company and shall state that such financial statements have been prepared in accordance with Generally Accepted Accounting Principles, that the audit by the Auditors in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that the Auditors have reviewed this indenture and any supplemental indentures, which have been executed and delivered pursuant to this indenture and the Debentures, and that they have obtained no knowledge of any default by the Company or, if they have such knowledge, specifying such default or event and the nature thereof;
- (iii) not later than 15 days before the end of each of the Company's fiscal years, a report prepared by the Company together with a certificate of the directors demonstrating and certifying that as calculated at the date of the certificate, for the next two semi-annual periods ending on and including April 1 or October 1 of the next year, the Cash Available at the end of each such period should be as set out in the certificate;
- (iv) promptly after receipt, all special reports or opinions submitted to the Company by independent chartered accountants in connection with annual or interim financial statements of the Company; and
- (v) promptly upon transmission thereof, copies of all filings made with the Trustee under this

indenture, and copies of all financial statements, reports, notices, and proxy statements sent by the Company to its shareholders and of all annual or periodic reports or registration statements, prospectuses, offering circulars or similar materials filed by it with any securities exchange, securities commission, or other Governmental Body and such other information as to the business and properties of the Company as the Trustee or such Debenture holder may from time to time reasonably request.

The Company further agrees that the Trustee, any person designated in writing by the Trustee and any representative of a nationally recognized firm of chartered accountants as designated in writing by any Debenture holder shall, at their expense, have the right to visit and inspect any of the properties of the Company and to discuss the affairs, finances, and accounts of the Company with its officers and with its independent accountants and shall also have the right to examine the books of account, records, reports, and other documents of the Company and to make copies thereof and take extracts therefrom; all at such reasonable time or times as will not interfere with the normal operation of the Company.

**Section 8.02 - Special Covenants.** The Company covenants and agrees with the Trustee for the benefit of the Trustee and the Debenture holders, that so long as any Debenture remains outstanding and subject to all the provisions of this indenture the Company will perform and observe each of the following covenants and conditions as applicable:

(1) **Negative Pledge.** The Company shall not create, assume or permit to exist any Lien upon or with respect to the Mortgaged Property other than Permitted Liens.

(2) **Dispositions.** The Company shall not:

- (i) except as hereby expressly permitted, sell, alienate, lease or otherwise dispose of, or agree so to do, the whole or any part of the Mortgaged Property; or
- (ii) enter into any transaction whereby all or substantially all of its undertaking, property and assets would become the property of any other Person, whether by way of reconstruction, reorganization, consolidation, amalgamation, merger, transfer, sale or otherwise, other than in accordance with Article Eleven.

(3) Corporate Distributions.

- (i) The Company shall not pay any amounts to officers, directors or shareholders of the Company or any of their respective associates by way of salary, bonus, commission, director's fees, contributions to pension plans, dividends, share redemptions or otherwise; provided, however, that this Section shall not prohibit (i) any payments by the Company pursuant to the terms of the Management Agreement (subject to Section 8.02(10)), or (ii) any payments to the Independent Director on account of fees or indemnification.
- (ii) Notwithstanding (i) above, the Company may make such dividend payments on and redemption of any preferred shares of the Company as provided for in the terms and conditions of those shares; provided, however, that the Company may not make any redemption of preferred shares of the Company where, as described in the terms and conditions of those shares, such redemption is optional.
- (iii) Notwithstanding (i) above, the Company, following the redemption of all preferred shares of the Company, may pay dividends on the common shares of the Company in amounts not exceeding \$60,000 per annum per \$500,000 of common shares (where the dollar amount of common shares is as indicated in the stated capital account of the Company).

(4) Other Indebtedness. The Company shall not create, incur, issue, assume, guarantee or otherwise become liable on any Indebtedness other than the following

- (i) Debentures issued and certified under the terms and conditions of this indenture;
- (ii) Indebtedness in respect of the Management Agreement;
- (iii) any other Indebtedness the aggregate of which is less than \$50,000 at any time;
- (iv) Indebtedness incurred on an interim basis to purchase Eligible Equipment for which the Company has arranged an irrevocable commitment from CN or a Canadian "A" Corporate to lease such Eligible Equipment; and



- (v) any Indebtedness in relation to activities under Section 8.02(6)(v).

(5) Expenditures. The Company shall not use its funds for any purpose other than:

- (i) the purchase of Eligible Investments;
- (ii) the purchase of Eligible Equipment for which the Company has arranged an irrevocable commitment from CN or a Canadian "A" Corporate to lease such Eligible Equipment under a Lease Agreement;
- (iii) the purchase of Eligible Equipment which at the time of acquisition is subject to a lease with CN or a Canadian "A" Corporate;
- (iv) as lessee, entering into operating leases with respect to Eligible Equipment where the Company has arranged an irrevocable commitment from CN or a Canadian "A" Corporate to sublease such Eligible Equipment;
- (v) the redemption or retraction of Debentures pursuant to the terms of this indenture;
- (vi) the purchase of Residual Insurance;
- (vii) the purchase of directors' and officers' liability insurance;
- (viii) any payments to indemnify a director or officer of the Company pursuant to any indemnification agreement between the Company and any director or officer of the Company or any payments on account of fees to the Independent Director;
- (ix) the payment of any fees pursuant to the terms of the Management Agreement provided that such payments are not prohibited under Section 8.02(10);
- (x) the payment of any fees, expenses, costs, charges or other amounts associated with entering into this indenture and any other transaction not prohibited hereby;
- (xi) the payment of any dividends on common or preferred shares of the Company or the redemption of any preferred shares of the Company provided that such dividends or redemptions are not prohibited by Section 8.02(3); or

- (xii) the payment of any other accounts owing by it in the operation of its business in a manner not prohibited hereby.

(6) Activities. The Company shall not engage in or hold, acquire or assume any interest in a business other than the following:

- (i) purchasing Eligible Equipment sold by CN and other suppliers for which the Company has arranged an irrevocable commitment from CN or a Canadian "A" Corporate to lease such Eligible Equipment under a Lease Agreement;
- (ii) leasing Eligible Equipment to CN or Canadian "A" Corporates under a Lease Agreement;
- (iii) leasing Eligible Equipment which has been returned to the Company pursuant to a Lease Agreement to any Person provided that any Class A Debentures issued to fund the acquisition of that Eligible Equipment have been fully redeemed by the Company;
- (iv) purchasing Eligible Equipment which at the time of acquisition is subject to a lease with CN or a Canadian "A" Corporate;
- (v) as lessee, entering into leases with respect to Eligible Equipment where the Company has arranged an irrevocable commitment from CN or a Canadian "A" Corporate to sublease such Eligible Equipment;
- (vi) selling Eligible Equipment owned by the Company and leased to CN or a Canadian "A" Corporate and assigning the Lease Agreement in respect thereof, or arranging leases on behalf of any Person, either of which may include a Put Obligation secured by the pledge of Class B Debentures issued and certified in compliance with the terms and conditions of this indenture;
- (vii) as provided under the terms of this indenture, issuing Debentures secured by the Lien hereof; and
- (viii) doing such other business as may be necessary or incidental to the foregoing.

(7) Leasing.

- (i) The Company as lessor shall not acquire, create, assume or enter into any lease with a lessee other than CN or a Canadian "A" Corporate.

- (ii) The Company shall not, as lessor, acquire, create, assume, or enter into a lease with any Person other than CN without the prior written consent of all Debenture holders.
- (iii) Notwithstanding items (i) and (ii) above, the Company may lease Eligible Equipment which has been returned to the Company pursuant to a terminated Lease Agreement to any Person provided that any Class A Debentures issued to fund the terminated Lease Agreement have been redeemed in full and such new leases do not require the issuance of any new Debentures.
- (iv) The Company shall not acquire, create, assume or enter into any sublease under Section 8.02(6)(v) or any Lease Agreement unless:
  - (a) for Lease Agreements which are funded in any part by the issuance of Debentures, the Lease Rate under such Lease Agreement exceeds the rate of interest applicable to those Debentures,
  - (b) for Lease Agreements which are not funded by the issuance of any Debentures, the Lease Rate under such Lease Agreement exceeds the Canada Bond Rate ( where the Weighted Average Maturity is equal to the term of the Lease Agreement) determined within 30 days prior to the date of entering into such Lease Agreement plus 1.00%, and
  - (c) for subleases entered into under Section 8.02(6)(v), a payment is received by the Company from the lessee under the sublease exceeding the amount of each payment required to be made by the Company under the lease by which the Company, as lessee, leased the Eligible Equipment.
- (v) The Company shall not acquire, create, assume or enter into any Lease Agreement which terminates or is terminable at the option of the Lessee thereunder prior to March 31, 1996.
- (vi) After the earliest of:
  - (a) the third anniversary of the date on which the Company issues preferred shares for an aggregate consideration of not less than \$4,500,000 as permitted under Section 9.01(2); or

(b) the first date on which the Portfolio Amount exceeds \$300,000,000; or

(c) December 31, 1992,

(hereinafter referred to as the "Crystallization Date") the Company shall not enter into any Lease Agreements or purchase any Eligible Equipment except where a Lessee gives an irrevocable commitment to exercise a purchase option under a pre-existing Lease Agreement; provided, however, that the Company may only enter into new Lease Agreements to the extent that such commitment has increased the capacity of the Company to enter into new Lease Agreements.

(vii) The Company shall not agree to any reduction in the amount of, or extension of the due date for, any payment under any Lease Agreement.

(8) New Issue Test. The Company shall not issue any additional Class A Debentures or Class B Debentures, issue any additional common shares of the Company (following the issue of common shares for an aggregate consideration of \$1,000,000 where such issue may take place through two or more issues of common shares), make any optional redemption of Class A Debentures, pay any fees to Management after the Crystallization Date (where such fees were earned and unpaid prior to the Crystallization Date), dispose of any Lease Agreement, purchase any Residual Insurance or purchase any Eligible Equipment unless, as calculated at the date of such additional issue, redemption, payment, disposition or purchase, after giving effect to such additional issue, redemption, payment, disposition or purchase:

(i) the ratio of Adjusted Assets to Adjusted Liabilities exceeds 1 to 1;

(ii) the Senior Indebtedness Ratio is less than 6.5 to 1.0; and

(iii) the Cash Flow Test is met.

The satisfaction of each of the above tests shall be evidenced by the Company issuing to the Trustee a certificate signed by the directors, such certificate to be substantially in the form of Schedule D hereto, together with a certificate signed by two officers of each Class C Subordinated Debenture holder, such certificate to be in the form of Schedule E hereto or in the absence of such a certificate from each Class C Subordinated Debenture holder, written confirmation that the New Issue Tests have been satisfied from all holders of Class A Debentures and Class B Debentures.

(9) Maintenance Test. The Company shall ensure that the Cash Available at the end of each full semi-annual period ending on and including April 1 or October 1 of each year, as evidenced in the annual certificates issued to the Trustee under Section 8.01(12)(iii) or if the calculations in such certificates were erroneous as evidenced by the actual Cash Available as such items are shown on the financial statements of the Company, is not less than zero for any four consecutive periods.

(10) Fees to Management. Prior to the Crystallization Date, the Company shall not pay to Management any fees under the Management Agreement except for the fees referred to under sections 5.01, 5.02, 5.08 and 5.09 of that agreement (subject to any adjustments to those fees pursuant to section 5.12 of that agreement).

(11) Prohibition on Guarantees and Loans. Except as herein otherwise permitted, the Company shall not, whether directly or indirectly or in any other manner whatsoever accord financial assistance (including by way of Guarantee) in respect of the Indebtedness of any other Person.

**Section 8.03 - Registrations and Deliveries.** The Company covenants that:

- (a) forthwith after the execution of this indenture and after the execution of each instrument supplemental or ancillary hereto, it shall as applicable register, deposit, file or record, or cause to be registered, deposited, filed or recorded the same or a financing statement or other prescribed statement in respect thereof at all offices where, in the opinion of Counsel, such registration, filing or recording may be necessary or advisable to preserve or protect the Lien hereof;
- (b) from time to time, it shall renew such registration, filing or recording as required or advisable to maintain the Lien hereof as a valid and effective security;
- (c) promptly after any such registration, filing, recording or renewal, it shall cause to be delivered to the Trustee certificates establishing such registration, filing, recording or renewal and an opinion of Counsel evidencing that the provisions of this section 8.03 have been complied with in respect of this indenture or such supplemental or ancillary instrument, as the case may be; and
- (d) forthwith after execution of this indenture and after the execution of each instrument supplemental or ancillary hereto, it shall deliver to the Trustee such documents of title, security certificates (including share certificates) and other documents

as, in the opinion of Counsel, are necessary or appropriate to preserve or protect the Lien hereof in the property represented by such documents of title, security certificates and other documents.

Provided that, and notwithstanding anything herein to the contrary, unless a default hereunder has occurred and is continuing, or a Debenture holder's Request is delivered to the Trustee whereby the holders delivering such request, in good faith but otherwise in their sole discretion, deem themselves insecure due to a change of circumstances since the purchase by or pledge to them of their Debentures, or the Trustee in good faith but otherwise in its sole discretion, deems the Debenture holders insecure due to any change of circumstances, no registrations, filings or recordings relating to the security hereby created will be effected except the following:

- (A) filings, recordings or deposits which may be permitted pursuant to section 86 of the Railway Act (Canada),
- (B) in the Province of Ontario, such registrations, filings and recordings as may be required under the Personal Property Security Act (Ontario) and the Corporation Securities Registration Act (Ontario),
- (C) in the Provinces of Alberta and Quebec, such registrations, deposits, filings and recordings as, in the Opinion of Counsel, may be of material advantage in preserving the Lien hereof and the rights of Debenture holders and the Trustee hereunder, and
- (D) in the United States, such filings, registrations, deposits, or recordings as may be required with the Interstate Commerce Commission.

**Section 8.04 - Further Assurances.** Subject to Section 8.03, the Company covenants and agrees that:

- (a) the Company shall from time to time execute and deliver all such further deeds or instruments necessary to subject any other property of the Company, to the extent assignable by law, to the floating charge created hereby as are required by the provisions of this indenture or as, in the opinion of Counsel, are requisite or desirable for the purpose of effectively charging such property in favour of the Trustee as and by way of a first floating charge for the purpose of and upon the conditions specified herein;

- (b) not later than 120 days after the end of each fiscal year of the Company and at such other times as the Trustee may reasonably request, the Company shall cause to be delivered to the Trustee an opinion of Counsel stating that, in the opinion of such Counsel, all such action has been taken including, but not limited to, the execution and delivery and the registration, filing, recording, re-registration, re-filing or re-recording of this indenture and all instruments supplemental or ancillary hereto, as is necessary or of advantage to validly give to the Trustee and to maintain the first floating charge provided for herein, on the property and rights respectively subject thereto other than such rights as have expired or such property as has been disposed of in accordance with the provisions hereof and subject only to Permitted Liens.

**Section 8.05 - Insurance.**

(1) The Company will maintain or cause to be maintained insurance including, without limitation, insurance upon the Mortgaged Property, in such amounts and in such manner, as is usual in the case of companies similarly situated and operating generally similar property and with such insurance companies as the Company may select, and will duly and punctually pay or cause to be paid the premiums and other sums of money payable for that purpose, and will, at the request of the Trustee, furnish to the Trustee such information, including certificates of insurance, relating to the insurance carried by it as the Trustee may reasonably require from time to time.

(2) All insurance policies maintained by the Company pursuant to this section 8.05 shall:

- (i) name the Trustee as an additional insured as its interest may appear;
- (ii) provide that in respect of the interest of the Trustee in such policies, the insurance shall not be invalidated by any action or inaction of the Company and shall insure the Trustee regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Company;
- (iii) be primary without right of contribution from any other insurance which is carried by the Trustee or any other Person and expressly provide that all the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured;

- (iv) provide that no cancellation or termination thereof or change therein, for any reason whatsoever, shall take effect unless the insurer concerned has given the Trustee not less than 60 days' prior written notice of such proposed action; and
- (v) provide that all insurance proceeds shall (except in the case of public liability insurance) be payable to the Trustee.

(3) At any and all times upon the written request of the Trustee and, in any event, on or before December 31, 1988 and thereafter not later than 90 days after the end of each fiscal year of the Company, the Company shall furnish to the Trustee an Officers' Certificate (and, with respect to the matters referred to in paragraph (i) of this Subsection 8.05(3), reports signed by the issuing companies) specifying:

- (i) the numbers, amounts and expiration dates of all insurance policies then in effect with respect to the Mortgaged Property or any part thereof, the names of the issuing companies, and the properties and risks covered thereby;
- (ii) whether or not, to the best of the knowledge and belief of the signers, the Company has complied with all the terms and conditions of all such insurance policies and with all requirements of boards of underwriters or similar bodies applicable to the Mortgaged Property or any part thereof (and, if not, specifying any particulars in respect of which it has not, the duration of the failure and the action taken and proposed to be taken by the Company in respect thereof).

(4) The Company shall deliver to the Trustee duplicate originals (or copies certified by the insurers thereunder or their agents) of all insurance policies which are required to be maintained pursuant to the provisions hereof.

(5) Notwithstanding the foregoing, where Eligible Equipment owned by the Company is subject to an existing Lease Agreement with CN pursuant to which all risk of loss and potential liability is on the lessee or any lease with CN where the Company has furnished to the Trustee a certificate signed by two officers of the Company stating that under the terms of the lease all risk of loss and potential liability is on the lessee, the insurance requirements imposed under this Section 8.05 shall be satisfied if the Company requires the lessee, at all times prior to the return of the Eligible Equipment to the Company, to cause to be carried and maintained public liability and property damage insurance in respect of the Eligible Equipment against the risks and in the amounts, if any,



customarily insured against by the Lessee in respect of similar equipment owned or leased by it. Further, or in the alternative the Lessee may be permitted to provide for deductibles and/or self insurance.

**Section 8.06 - Trustee Empowered to Perform Covenants.**

If the Company shall fail to perform any of the covenants or fulfil any of the conditions contained in this indenture, the Trustee in its discretion may notify the Company and the holders of Debentures of such failure on the part of the Company and may itself perform any such covenant or fulfil any such condition capable of being performed by it and, if any such covenant or condition requires the payment or expenditure of money, it may make such payments or expenditures with its own funds, or with money borrowed by or advanced to it or with moneys held hereunder and all sums so paid or expended shall be payable by the Company forthwith on demand, shall bear interest from the date of payment or expenditure until paid at a rate per annum equal to Canadian Prime Rate, and shall be secured by the Lien hereof; provided, however, that any such notification or performance or payment or expenditure shall be without prejudice to any right that the Trustee or any other Person might have as a result of such default.

## ARTICLE NINE

### DEFAULT AND ENFORCEMENT

**Section 9.01 - Events of Default.** The Lien hereof shall become enforceable, subject to the terms herein contained, in each and every of the events following:

(1) if the Company makes default in payment of the principal of or interest on any Debenture when the same becomes due under any provision hereof or of any Debenture and such default shall continue for a period of five Banking Days after written notice thereof from a Debenture holder or the Trustee to the Company;

(2) if either the articles of incorporation of the Company or the Shareholders Agreement are amended without the prior written consent of the Trustee (which shall not be refused if the Trustee acting in good faith considers that such amendment will not materially adversely affect the rights of any Debenture holder) provided, however, that, subject to the Canada Business Corporations Act, the Company shall be permitted, and consent is hereby given, to amend its articles of incorporation to provide for the issuance of a new series of the existing class of preferred shares of the Company subject to the following limitations:

- (i) the new series of preferred shares may carry a maximum preferential dividend rate of \$22.00 per share per annum payable in a manner similar to the Series 88-1 Cumulative Preferred Shares of the Company;
- (ii) the terms of the new series of preferred shares may provide for a maximum further dividend rate of \$0.04931507 per day per \$100 of unpaid preferential and further dividends payable in a similar manner as the Series 88-1 Cumulative Preferred Shares of the Company;
- (iii) none of the new series of preferred shares may be redeemable by the Company prior to the Crystallization Date; and
- (iv) such new series of preferred shares shall be issued for an issue price of \$100 per share and the total aggregate consideration paid for such shares shall not exceed \$4,500,000;

(3) if the Company fails to carry out or observe any covenant or condition contained in Section 8.02;

(4) if the Company fails to carry out or observe any other covenant or condition contained herein (or in any agreement

between the Company and the holder of a Debenture under which such Debenture was agreed to be issued to such holder) on its part to be observed or performed and, after notice in writing has been given by the Trustee to the Company specifying such failure and requiring the Company to put an end to the same, the Company shall fail to make good such failure within a period of 30 days, unless the Trustee (having regard to the subject matter of such failure) shall have agreed to a longer period, and in such event, within the period agreed to by the Trustee;

(5) if an order is made or an effective resolution passed for the winding up, liquidation or dissolution of the Company, except in the course of carrying out or pursuant to a transaction in respect of which the conditions of Article Eleven are duly observed and performed;

(6) if the Company makes a general assignment for the benefit of its creditors or a proposal under the Bankruptcy Act (Canada) or is declared bankrupt, or if a liquidator, trustee in bankruptcy, custodian, sequestrator, receiver, receiver and manager (or any other Person with similar powers) of the Company or of any part of the property of the Company which is, in the opinion of the Trustee, a substantial part thereof, is appointed, or if the Company shall propose a compromise or arrangement under the Companies' Creditors Arrangement Act or any similar legislation;

(7) if an encumbrancer takes possession of all or any part of the Mortgaged Property which has, in the opinion of the Trustee, a value greater than \$1,000,000 or if a distress or execution or any similar process is levied or enforced against the Mortgaged Property or any part thereof and remains unsatisfied for the shorter of a period of 30 days and such period as would permit such property or such part thereof to be sold thereunder;

(8) if there shall be outstanding for more than 30 days of entry any order or judgment of any court directing the payment of money by the Company and such order or judgment shall not have been and remain vacated, discharged or stayed pending appeal and if at any time when such order or judgment shall have been outstanding the aggregate payments which the Company shall have been directed to make by all such orders or judgments shall exceed \$100,000;

(9) if the Company issues any common shares to any Person other than SLX Management Inc. or a Class C Subordinated Debenture holder (provided that, after giving effect to such issue, the number of common shares of the Company held by all Class C Subordinated Debenture holders does not exceed 49% of the outstanding common shares of the Company) without the consent of all Debenture holders;

(10) if the Company issues any preferred shares to any Person other than SLX Management Inc.;

(11) if SLX Management issues any shares to a Person other than Paul J. D. Miller without the consent of all Debenture holders;

(12) if any of the common shares of the Company or of SLX Management Inc. (or any interest in such shares) are transferred without the consent of all Debenture holders except for (i) any transfer of up to 49% of the common shares of the Company, pursuant to an option agreement, to a holder of Class C Subordinated Debentures or its assignee under such agreement; and (ii) any transfer of shares as a result of SLX Management Inc. pledging its shares in the Company, or Paul J. D. Miller pledging his shares in SLX Management Inc. to a bank, investment dealer or trust company (where such bank, investment dealer or trust company is carrying on business in Canada and has an aggregate paid in capital and retained earnings exceeding \$35,000,000) provided that the transferee agrees to be bound by the Shareholders Agreement; and

(13) if, as a result of any Person commencing a legal action or proceeding of any kind whatsoever, an order is made for any modification or alteration of any arrangement contained in the articles or by-laws of the Company or in the Shareholders Agreement unless in the opinion of the Trustee such modification or alteration will not materially adversely affect the rights of any Debenture holder.

The Trustee shall give to the Debenture holders and the Company, in the manner provided in Sections 15.03 and 15.01 and within 30 days after the Trustee becomes aware of the occurrence of a default, notice of such default unless such default has ceased prior to the termination of such 30-day period and unless the Trustee in good faith determines that the withholding of such notice is in the best interests of the Debenture holders and gives written notice of such determination to the Company.

Notwithstanding the foregoing, the Trustee shall give to all Class C Subordinated Debenture holders, in the manner provided in Section 15.03, immediately after the Trustee becomes aware of the occurrence of a default, notice of such default.

#### **Section 9.02- Acceleration on Default.**

(1) Any Class C Subordinated Debenture holder may upon receipt of a notice under Section 9.01, if the default is one other than under Section 9.01(6), Section 9.01(13) or under Section 9.01(3) in conjunction with the Company failing to carry out or observe the covenant in Section 8.02(9), give to the Company and to the Trustee, in the manner provided in Sections 15.01 and 15.02 and within 7 days after the Class C Subordinated Debenture holder has received notice under Section 9.01, notice that it will assist the Company to remedy such default and upon such notice being given, the Company shall have a period of 45

days from receipt by the Trustee of such notice, to remedy the default. Upon the giving of such notice by a Class C Subordinated Debenture holder, the Company shall afford the Class C Subordinated Debenture holder an opportunity to so assist the Company, provided, however, that the Class C Subordinated Debenture holder shall not thereby undertake any obligation whatsoever to the Company or to the Trustee or to any Debenture holder. In the event that the Class C Subordinated Debenture holder, to assist the Company in curing any default hereunder, makes any payment to or on behalf of the Company the Class C Subordinated Debenture holder shall be entitled to the benefit of the Lien hereof with respect to the return of such payment as if such payment were part of the principal of a Class C Subordinated Debenture.

(2) In case the Lien hereof shall have become enforceable as hereinbefore provided, and if following receipt of notice under Section 9.01 no Class C Subordinated Debenture holder has, if applicable, given notice within 7 days of such receipt, of its intent to assist the Company to remedy the relevant default or if any Class C Subordinated Debenture holder has given such notice and the 45 day period in Section 9.02(1) has expired without the default having been remedied, the Trustee may in its discretion, and shall upon receipt of a Debenture holders' Request requesting such action, by notice in writing to the Company declare the principal of and interest (including interest on amounts in default) on the Debentures and all other moneys secured hereby, to be due and payable (the date of such notice is hereinafter referred to as the "Acceleration Date"). Upon such declaration the same shall forthwith become immediately due and payable to the Trustee, anything therein or herein contained to the contrary notwithstanding, and the Company shall and will pay forthwith to the Trustee for the benefit of the holders of the Debentures an amount equal to the amount of all principal of and interest (including interest on amounts in default) as aforesaid on all the Debentures and all other moneys secured hereby, together with interest at the respective rates borne by the Debentures on such principal and interest and at the same rate on such other moneys from the date of the said declaration until payment is received by the Trustee. Such payment when made shall be deemed to have been made in discharge of the Company's obligations hereunder and any moneys so received by the Trustee shall be applied in the same manner as if they were proceeds of realization of the Mortgaged Property.

**Section 9.03 - Waiver of Default by Trustee.** In case the Lien hereof shall have become enforceable, the Trustee, so long as it has not become bound to enforce the security hereunder, shall, unless otherwise directed by a Debenture holders' Request, have power to waive any default hereunder if, in the Trustee's opinion, the same shall have been cured or adequate satisfaction made therefor, and in such event to cancel any such declaration and/or demand theretofore made by the Trustee in the exercise of its discretion, upon such terms and conditions as to the Trustee

may seem advisable; provided that no delay or omission of the Trustee to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and provided further that no act or omission of the Trustee in the premises shall extend to or be taken in any manner whatsoever to effect any subsequent default under this indenture, or any Debenture hereunder or the rights resulting therefrom. Any waiver or cancellation given by the Trustee under this Section 9.03 shall be revoked ab initio and terminated by the Trustee if so directed by a Debenture holders' Request. The Trustee shall give the Debenture holders notice of any waiver or cancellation given by the Trustee under this Section 9.03.

**Section 9.04 - Enforcement by the Trustee.** Whenever the Lien hereof shall have become enforceable and so long as the said Lien shall remain enforceable, but subject to the provisions of Section 8.06 and to the provisions of any extraordinary resolution that may be passed by the Debenture holders as provided in Article Twelve:

(1) The Trustee in the exercise of its discretion may proceed to realize upon the Lien hereof and shall in connection with such realization enforce its rights and the rights of Debenture holders hereunder by entry under Section 9.06; or by the appointment of a receiver or receiver and manager under Section 9.08; or by sale under Section 9.09; or by lease, sub-lease, licence, sub-licence or grant of profit a prendre under Section 9.10; or, without regard to the adequacy of the Lien hereof or the solvency of the Company, by proceedings in any court of competent jurisdiction for the appointment of a receiver or receiver and manager or for sale of the Mortgaged Property or any part thereof or for foreclosure; or generally by any other action, suit, remedy or proceeding authorized or permitted by this indenture or by law or by equity; and may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the holders of Debentures lodged in any bankruptcy, dissolution, winding-up or other judicial proceedings relative to the Company;

(2) No such remedy for the realization of the Lien hereof or for the enforcement of the rights of the Trustee or of the Debenture holders shall be exclusive of or dependent on any other such remedy but any one or more of such remedies may from time to time be exercised independently or in combination. Further, no taking of any judgment or order in respect of any of the covenants contained in this indenture shall operate as a merger of any of such covenants or operate to prevent any further judgment or order in respect thereof or any further remedy for the enforcement of the Lien hereof;

(3) All rights of action hereunder may be enforced by the Trustee without the possession of any of the Debentures or the

production thereof in the trial or other proceedings relative thereto;

(4) Upon receipt of a Debenture holders' Request and upon being indemnified to its satisfaction as provided in Subsection 13.02(2), the Trustee shall exercise or take such one or more of the aforesaid remedies as such Debenture holders' Request may direct or, if such Debenture holders' Request contains no direction, as the Trustee may deem expedient; provided that if any such Debenture holders' Request directs the Trustee to take proceedings out of court the Trustee may if required by law take judicial proceedings in lieu thereof.

(5) Notwithstanding the foregoing, the exercise of any of the aforesaid remedies by the Trustee shall at all times be subject to the rights of any Lessee pursuant to a Lease Agreement including, without limitation, their right of quiet enjoyment under the Lease Agreement.

#### **Section 9.05 - Enforcement by Debenture holder.**

(1) No holder of Class C Subordinated Debentures shall have any right to institute any action or proceeding or to exercise any other remedy authorized by this indenture or by law or by equity for the purpose of enforcing payment of principal or interest or of realizing the Lien hereof, or by reason of jeopardy of security, or for the execution of any trust or power hereunder.

(2) No holder of Class A Debentures or Class B Debentures shall have any right to institute any action or proceeding or to exercise any other remedy authorized by this indenture or by law or by equity for the purpose of enforcing payment of principal or interest or of realizing the Lien hereof, or by reason of jeopardy of security, or for the execution of any trust or power hereunder, unless such holder shall have previously given to the Trustee written notice of the happening of an Event of Default which has rendered enforceable the Lien hereof and continuance thereof for 30 days or unless the Debenture holders' Request and indemnity referred to in Section 9.04 shall have been tendered to the Trustee and the Trustee shall have failed to act within a reasonable time thereafter; in either case but not otherwise, any such Debenture holder or combination of such Debenture holders acting on behalf of all Debenture holders shall be entitled to take proceedings in any court of competent jurisdiction such as the Trustee might have taken under this Article Nine, but in no event shall any such Debenture holder or combination of such Debenture holders have any right to exercise the power of sale conferred hereby on the Trustee or to appoint a receiver or receiver and manager or to exercise or take any other remedy or proceedings out of court.

(3) It is agreed that no one or more holders of Debentures shall have any right in any manner whatsoever to affect, disturb or prejudice the Lien hereof by its or their action, or to

enforce any right hereunder or under any Debenture except subject to the conditions and in the manner herein provided, and that all powers and trusts hereunder shall be exercised and all proceedings at law shall be instituted, had and maintained by the Trustee, except only as herein provided, and in any event for the benefit of all holders of outstanding Debentures (subject to the priorities contained herein).

**Section 9.06 - Entry by the Trustee.** Whenever the Trustee shall have determined under the provisions of Section 9.04 to realize upon the Lien hereof, the Trustee shall have the right by its officers, agents or attorneys to enter into and upon and take possession of all or any part of the Mortgaged Property with power to exclude the Company, its servants and agents therefrom and thenceforth to possess and use and exercise all the rights and benefits of the Company under or in respect of the Mortgaged Property, to collect all moneys due and becoming due thereunder and to take possession of all or any documents and/or records evidencing or relating to any part of the Mortgaged Property, with full power to carry on and manage the business and operations of the Company and to receive the rents, incomes and profits of the Mortgaged Property or parts thereof so taken possession of and of the said business and operations, and to pay therefrom all expenses of the business and operations of the Company and the maintenance, protection and preservation of the Mortgaged Property and all charges against the Mortgaged Property ranking in priority to the security constituted by this indenture or the payment of which may be necessary to preserve and protect the Mortgaged Property and for such purposes to preserve, maintain, use and operate the Mortgaged Property and make such additions, replacements or alterations thereto as it shall deem necessary. The remainder of the moneys so received and not required for any of the above purposes shall be applied by the Trustee in the manner provided in Section 9.12. The foregoing is, however, subject to the condition that the Trustee shall, if all defaults hereunder existing to the knowledge of the Trustee shall have been made good or waived as herein provided, restore the Mortgaged Property and the said business to the Company, and pay to it any of the moneys so received then remaining in its hands. In case of any such return of the Mortgaged Property to the Company, the Lien hereof shall no longer be or be deemed to be enforceable by reason of the default whereby the right of entry became vested in the Trustee, and any declaration and/or demand that may have been made by the Trustee pursuant to Section 9.02 as a result of such default shall be and be deemed to be cancelled, and any part of the Mortgaged Property which shall have become subject to a fixed charge solely by reason of the crystallization of the floating charge shall be freed from such fixed charge, but shall be thereupon subject to the floating charge and security interest provided for in this indenture, as fully and to the same extent as though no default had occurred, and the Company shall execute contemporaneously with such return of the Mortgaged Property any deeds or other instruments which the Trustee may deem necessary or desirable for such purpose.



**Section 9.07 - Surrender by Company.** The Company binds and obliges itself to yield up possession of its rights, properties and assets and the conduct of its undertaking to the Trustee on demand whenever the Trustee shall have a right of entry under the provisions of this indenture and agrees to put no obstacle in the way of, but to facilitate by all legal means, the actions of the Trustee hereunder and not to interfere with the carrying out of the powers hereby granted to it. The Company hereby binds itself in said event to consent to any petition or application presented to the court by the Trustee in order to effectuate the intent of this indenture, and the Company shall not, after receiving due notice from the Trustee that it has taken possession of the said rights, properties, assets, and undertaking by virtue of this indenture, continue in the said rights, properties, assets and undertaking, unless with the express written consent and authority of the Trustee, and shall forthwith, by and through its officers and directors, execute such documents and transfers as may be necessary to place the Trustee in legal possession of said rights, properties, assets and undertaking and after receipt of such notice all the powers, functions, rights, and privileges of each and every of the directors and officers of the Company shall cease and determine with respect to the Mortgaged Property unless specifically continued in writing by the Trustee or unless the Mortgaged Property shall have been restored to the Company as hereinbefore provided.

**Section 9.08 - Appointment of Receiver.** Whenever the Trustee shall have determined under the provisions of Section 9.04 to realize upon the Lien hereof by the appointment of a receiver (which term as used in this indenture includes a receiver and manager or receiver-manager), the Trustee shall have the right to appoint a receiver, and the following provisions shall apply:

(1) Such appointment shall be made by an instrument in writing signed by two officers of the Trustee and a copy of such instrument, certified by an officer of the Trustee under its corporate seal shall be evidence for all purposes of such appointment. The Trustee may from time to time in the same manner remove or replace any receiver so appointed and appoint another in his stead. In making any such appointment the Trustee shall be deemed to be acting as the agent and attorney of the Company.

(2) Any such appointment may be limited to any part or parts of the Mortgaged Property or may extend to the whole thereof as the Trustee deems fit.

(3) Every such receiver may, in the discretion of the Trustee, be vested with all or any powers and discretions of the Trustee, including without limiting the foregoing, the power to:

- (i) take possession of, collect and get in all or any part of the Mortgaged Property and, for that purpose, to take proceedings in the name of the

Company or otherwise and to make any arrangement or compromise;

- (ii) carry on or concur in carrying on all or any part of the business and operations of the Company;
- (iii) borrow or raise money on all or any part of the Mortgaged Property in priority to this indenture or otherwise for such purposes as may be approved by the Trustee; and
- (iv) sell or concur in selling all or any part of the Mortgaged Property (without notice in such manner as may seem advisable to the receiver) and to effect such sale by conveying the Mortgaged Property in the name and on behalf of the Company or otherwise;

and the receiver shall be vested with such powers and discretions of the Trustee as are granted to him in the instrument of appointment and any supplement thereto.

(4) The Trustee may from time to time fix the remuneration of every such receiver and direct the payment of such remuneration out of the Mortgaged Property, the income therefrom or the proceeds thereof.

(5) The Trustee may from time to time require any such receiver to give security for the performance of his duties and may fix the nature and amount thereof, but shall not be bound to require such security.

(6) Every such receiver may, with the consent in writing of the Trustee, borrow or raise money for the purposes of carrying on the business or operations of the Company or for the maintenance, protection or preservation of the Mortgaged Property or any part thereof and the receiver may issue certificates (herein called "receiver's certificates") for such sums as will, in the opinion of the Trustee, be sufficient for obtaining upon the security of the Mortgaged Property or any part thereof the amounts from time to time required, and such receiver's certificates may be payable either to order or to bearer and may be payable at such time or times as to the Trustee may appear expedient, and shall bear interest as shall therein be declared, and the receiver may sell, pledge or otherwise dispose of the same in such manner as to the Trustee may seem advisable, and may pay such commission on the sale thereof as to the Trustee may appear reasonable, and the amounts from time to time payable by virtue of such receiver's certificates shall form a charge upon the Mortgaged Property in priority to the security constituted by this indenture.

(7) Every such receiver shall, so far as concerns responsibility for his acts or omissions, be deemed the agent of the Company, and in no event the agent of the Trustee, and the Company shall be solely responsible for his acts or defaults, and the Trustee shall not, in making or consenting to such

appointment, incur any liability to the receiver for his remuneration or otherwise howsoever.

(8) The Trustee may pay over to such receiver any moneys constituting part of the Mortgaged Property to the intent that the same may be applied for the purposes hereof by such receiver, and the Trustee may from time to time determine what funds the receiver shall be at liberty to keep in hand with a view to the performance of his duty as such receiver.

(9) Except as may be otherwise directed by the Trustee, all moneys from time to time received by such receiver shall be paid over to the Trustee to be held by it on the trusts of this indenture.

**Section 9.09 - Sale by the Trustee.** Whenever the Trustee shall have determined under the provisions of Section 9.04 to realize upon the Lien hereof by sale, the Trustee shall have the right to, with or without entry or possession, sell and dispose of all or any part of the Mortgaged Property en bloc or in parcels, at public auction or by tender or with the consent of the Company by private contract and at such time or times and on such terms and conditions as the Trustee shall determine having first given such notice of the time and place of such sale as may be required by law and as the Trustee may think proper. It shall be lawful for the Trustee to make any such sale whether by auction, tender or private contract, either for cash or upon credit or partly for one and partly for the other, upon such reasonable conditions as to terms of payment as it may deem proper; also to rescind or vary any contract of sale that may have been entered into and resell with or under any of the powers conferred herein; also to stop, suspend or adjourn any sale from time to time and hold the sale as adjourned without further notice; also to deliver to the purchaser or purchasers of the Mortgaged Property or any part thereof a good and sufficient deed or deeds for the same.

**Section 9.10 - Trustee may Lease and Sub-Lease.** Whenever the Trustee shall have determined under the provisions of Section 9.04 to realize upon the Lien hereof by lease, sub-lease, licence, sub-licence or grant of profit a prendre, the Trustee shall have the right to, with or without entry or possession, make any lease, sub-lease, licence, sub-licence or grant any profit a prendre of any freehold or leasehold lands and premises or any lease, licence, or right or privilege, private or statutory, similar thereto and forming part of the Mortgaged Property, without responsibility for any loss or diminution in value of the Mortgaged Property which may thereby arise. No lessee, sub-lessee, licensee, sub-licensee or grantee of a profit a prendre shall be bound to enquire into the regularity or propriety of any such lease, sub-lease, licence, sub-licence or grant of profit a prendre.

**Section 9.11 - Other Judicial Remedies.** Without prejudice to the generality of Section 9.04, whenever the Trustee shall have determined under the provisions of Section 9.04 to realize upon

the Lien hereof, the Trustee shall have the right to take proceedings to the extent available in any court of competent jurisdiction for an order:

(1) directing that the Company's right of redemption of the Mortgaged Property or any part thereof which is the subject of such proceedings be foreclosed;

(2) directing the sale, lease, sub-lease, licence or sub-licence of any of the Mortgaged Property which is the subject matter of such proceedings free from the Company's right of redemption; or

(3) appointing a receiver to take possession of the Mortgaged Property or such part thereof as may be the subject matter of such proceedings with the powers and rights set forth in Section 9.08 and such additional powers and rights as the court may direct.

**Section 9.12 - Application of Proceeds of Sale or Realization.**

Except as otherwise provided herein or by law or by the order of a court, the net proceeds (after deducting any expenses or costs of enforcement) arising from the enforcement of any remedy provided for herein, including, without limitation, the carrying on of the business of the Company and the sale or other realization of the whole or any part of the Mortgaged Property, whether under any sale by the Trustee or by judicial process or otherwise, shall be held by the Trustee and, together with any other moneys then or thereafter in the hands of the Trustee available for the purpose, shall be applied by the Trustee as follows:

(1) firstly, to pay all Liens, if any, on the Mortgaged Property ranking in priority to the Lien hereof;

(2) secondly, to pay all amounts due to the Trustee hereunder, including the interest thereon;

(3) thirdly, in accordance with the following:

(i) the Trustee shall maintain two separate and distinct accounts (hereinafter referred to as the "Class A Fund" and the "Class B Fund", respectively) and the Class B Fund shall consist of a series of separate accounts each one designated as representing a specific Class B Debenture;

(ii) as at the Acceleration Date, the Trustee shall determine the aggregate of the principal of and accrued and unpaid interest, including interest on amounts in default, on all outstanding Class A Debentures (hereinafter referred to as the "A Amount");

- (iii) as at the Acceleration Date, the Trustee shall determine the present value of each outstanding Class B Debenture, each such determination shall be made by discounting from the maturity date of the Class B Debenture to the Acceleration Date the principal amount of that Class B Debenture by the Canada Bond Rate (determined separately in respect of each Class B Debenture) plus 1.00% calculated as at a date within the 10 day period following the Acceleration Date (the aggregate of which is hereinafter referred to as the "B Amount");
- (iv) moneys shall be deposited on a pro rata basis into the Class A Fund and the Class B Fund based on the relative values of the A Amount and the B Amount;
- (v) moneys deposited to the Class B Fund shall be divided on a pro rata basis (based on the present value determined in (iii) above for each Class B Debenture) into the separate account for each Class B Debenture;
- (vi) the Trustee shall continue to deposit moneys in accordance with (iv) and (v) above until there is sufficient money in the Class A Fund to pay all amounts owing on all Class A Debentures; thereafter, all moneys shall be deposited into the Class B Fund until the amount in the Class B Fund is equal to the aggregate sum of the principal on all outstanding unmatured Class B Debentures plus the unpaid principal and any accrued and unpaid interest on all outstanding matured Class B Debentures at which point the Class B Fund shall be fully funded;

(4) fourthly, but subject to the provisions of Sections 8.01(10) and 9.12(6) and as hereinafter in this Section 9.12 provided, in or towards the pro rata payment of the accrued and unpaid interest, including interest on amounts in default, on all Class C Subordinated Debentures;

(5) fifthly, in or towards the pro rata payment of the principal of all outstanding Class C Subordinated Debentures (for the purposes of any distribution hereunder, the principal of a Class C Subordinated Debenture shall include any amounts which are owing to the holder of that Debenture in relation to any assistance provided by that holder in accordance with Section 9.02(1));

(6) upon receipt of an instrument signed in one or more counterparts by the holder or holders of not less than 50% of the outstanding principal amount of all Class C Subordinated Debentures directing that the provisions of this Section 9.12(6) shall apply, the net proceeds available for application towards

the pro rata payment of all amounts owing on the Class C Subordinated Debentures shall not be applied as stated in Sections 9.12(4) and 9.12(5), but shall be applied as follows:

- (i) firstly, in or towards the pro rata payment of the principal of all outstanding Class C Subordinated Debentures (for the purposes of any distribution hereunder, the principal of a Class C Subordinated Debenture shall include any amounts which are owing to the holder of that Debenture in relation to any assistance provided by that holder in accordance with Section 9.02(1)); and
- (ii) secondly, but subject to the provisions of Section 8.01(10) and as hereinafter in this Section 9.12 provided, in or towards the pro rata payment of the accrued and unpaid interest, including interest on amounts in default, on all Class C Subordinated Debentures;

(7) the surplus, if any, of such moneys shall be paid to the Company or its assigns;

provided, however, that no payment shall be made pursuant to this section in respect of the principal of or interest (including interest on amounts in default) on any Debenture held, directly or indirectly, by or for the benefit of the Company prior to the payment in full of the principal of and interest (including interest on amounts in default) on all Debentures which are not so held.

**Section 9.13 - Payments from the Class A Fund.** The Trustee may immediately distribute any moneys deposited in the Class A Fund pro rata to all Class A Debenture holders on the basis of unpaid principal and accrued and unpaid interest, including interest on amounts in default, on all outstanding Class A Debentures.

**Section 9.14 - Payments from the Class B Fund.**

(1) If on or after the maturity date of any Class B Debenture, the Trustee is given notice from the holder of that Class B Debenture that, pursuant to the Put Obligation in respect of which that Class B Debenture was pledged such holder is entitled to the principal amount of that Class B Debenture or any portion thereof (the amount of such entitlement being hereinafter referred to as the "Claim Amount") then the Trustee shall distribute to that holder all amounts which are held in the specific account for that Class B Debenture (up to a maximum equal to the Claim Amount).

In the event that there are insufficient funds in the account for that Class B Debenture to pay the holder his Claim Amount, the Trustee may make further distributions from the account as moneys are deposited in such account pursuant to

Sections 9.12(3)(iv) and (v) provided, however, that in no event shall the aggregate amount of distributions with respect to any particular Class B Debenture exceed the Claim Amount (together with any interest on the unpaid portion thereof from the date of the notice in (1) above at the rate specified in the particular Class B Debenture) in respect of that Debenture.

(2) If at any time the Class B Fund becomes fully funded as such term is used in Section 9.12(3)(vi) then all income earned by any account within the Class B Fund thereafter may be distributed in accordance with Section 9.12.

**Section 9.15 - Termination of Class B Fund.** At such time as the Trustee shall determine that there are no outstanding Class B Debentures, any moneys remaining in any accounts within the Class B Fund may be distributed in accordance with Section 9.12.

**Section 9.16 - Distribution of Proceeds.** Payments to any Debenture holders pursuant to Sections 9.12, 9.13 and 9.14 shall be made as follows:

(1) At least 14 days notice of every such payment shall be given in the manner provided in Article Fifteen specifying the time when and the place or places where the Debentures are to be presented and the amount of the payment and the application thereof as between principal and interest.

(2) Payment of any Debenture shall be made upon presentation thereof at any one of the places specified in such notice. Any such Debenture paid in full upon such presentation shall be surrendered, and any such Debenture paid otherwise than in full upon such presentation shall be endorsed with a notation of such payment; but the Trustee may in its discretion dispense with presentation and surrender or endorsement in any special case upon such indemnity being given as it shall deem sufficient.

(3) From and after the date of payment specified in the notice, unless payment shall have been duly demanded and have been refused, the Debenture holders will be entitled to interest only on the remainder, if any, of the principal moneys and interest (including interest on amounts in default) due to them, respectively, on the Debentures, after deduction of the respective amounts payable in respect thereof on the date so specified.

(4) The Trustee shall not be required to make any interim payment to Debenture holders unless the moneys in its hands, after reserving thereout such amount as the Trustee may think necessary to provide for the payments mentioned in subsections (1) and (2) of Section 9.12, exceed five percent of the lesser of the aggregate principal amount of all of the Class A Debentures outstanding at the date of the declaration made pursuant to Section 9.02 or the aggregate principal amount of all Debentures outstanding as at the date of determination hereunder.

Section 9.17. - Trustee Appointed Attorney. The Company hereby irrevocably appoints the Trustee to be the attorney of the Company in the name and on behalf of the Company to execute and do any deeds, transfers, conveyances, assignments, assurances or things which the Company ought to execute and do, and upon request has refused so to do, under the covenants and provisions contained herein and generally to use the name of the Company in the exercise of all or any powers hereby conferred on the Trustee with full powers of substitution and revocation.

Section 9.18 - Persons Dealing with Trustee. No person dealing with the Trustee or its agent shall be concerned to enquire whether the security hereby constituted has become enforceable, or whether the powers which the Trustee is purporting to exercise have become exercisable, or whether any moneys remain due upon the security of this indenture or the Debentures, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety of regularity of any sale or of any other dealing by the Trustee with the Mortgaged Property or any part thereof, or to see to the application of any moneys paid to the Trustee; and, in the absence of fraud on the part of such person, such dealing shall be deemed, so far as regards the safety and protection of such person, to be within the powers hereby conferred and to be valid and effectual accordingly.

Section 9.19 - Immunity

(1) The Debenture holders and the Trustee hereby acknowledge that any rights, remedies or causes of action which now exist or may hereafter arise in relation to any claims under or relating to the Debentures, including but not limited to any right to the payment of principal or interest and any right to damages howsoever arising, exist and shall be asserted solely against the Company.

(2) The Debenture holders and the Trustee hereby waive, remise, release and forever discharge the incorporator and any past, present or future shareholder or assignee or pledgee thereof, director or officer of the Company or of any successor company of and from any action, cause of action, claim, right or remedy now existing or hereafter arising as a result of any act, transaction, occurrence, event, covenant, agreement, representation or warranty with respect to or relating to the Debentures or to the incorporation, ownership, direction or management of the Company and its affairs.

(3) Without limiting the generality of the foregoing, the Debenture holders and the Trustee hereby waive, remise, release, and forever discharge any rights, remedies or causes of action (statutory or otherwise) against any past, present or future director, shareholder or officer of the Company or any successor company with respect to any claims in relation to the wrongful payment of dividends or redemptions or other distribution due to any decision of a director or the recommendation of an officer that monies were available for the payment of a dividend on or



redemption of preferred shares of the Company where such decision or recommendation is based on the most recent audited balance sheet values of any assets of the Company.

(4) Notwithstanding any of the foregoing in this Section 9.19, the Debenture holders and the Trustee shall be entitled to exercise any and all rights and remedies provided by the Canada Business Corporations Act with respect to the wrongful payment of dividends, or redemptions or other distributions provided that such payment of dividends or redemptions or other distributions are in contravention of the provisions of the Canada Business Corporations Act and such amounts exceed the amounts which are permitted under Section 8.02(3) hereof unless such amounts were determined by the director, acting in good faith, to be permitted under that Section.

(5) Notwithstanding any of the foregoing, no past, present or future shareholder, director or officer of the Company or of any successor company shall be released with respect to any act of wilful misconduct or bad faith.

(6) In addition to the foregoing, and notwithstanding (1) above, the Debenture holders and the Trustee hereby waive, remise, release, and forever discharge any rights, remedies or causes of action (statutory or otherwise) against the Company or any successor company with respect to any claims in relation to the wrongful payment of dividends or redemptions or other distribution due to any decision that monies were available for the payment of a dividend on or redemption of preferred shares of the Company where such decision or recommendation is based on the most recent audited balance sheet values of any assets of the Company; provided, however, that the Debenture holders and the Trustee shall be entitled to exercise any and all rights and remedies provided by the Canada Business Corporations Act with respect to the wrongful payment of dividends, or redemptions or other distributions provided that such payment of dividends or redemptions or other distributions are in contravention of the provisions of the Canada Business Corporations Act and such amounts exceed the amounts which are permitted under Section 8.02(3) hereof unless such amounts were determined by a director or officer, acting in good faith, to be permitted under that Section.

**Section 9.20 - Remedies Cumulative.** No remedy herein conferred upon or reserved to the Trustee, or upon or to the Debenture holders, is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now existing or hereafter to exist by law or by statute.

**Section 9.21 - Judgment Against Company.** The Company covenants and agrees with the Trustee that, in case of judicial or other proceedings to enforce the security hereby created, judgement may be rendered against it in favour of the Debenture holders or in favour of the Trustee, as trustee for the Debenture holders, for any amount which may remain due in respect of the Debentures

and interest (including interest on amounts in default) thereon after the application to the payment thereof of the proceeds of any sale of the Mortgaged Property or any part thereof.

**Section 9.22 - Company to Execute Confirmatory Deed.** In case of any sale under the provisions of this Article, whether by the Trustee or under judicial proceedings, the Company agrees that it will execute and deliver to the purchaser on demand any instrument reasonably necessary to confirm to the purchaser the title of the property so sold, and, in case, of any such sale, the Trustee is hereby irrevocably authorized by the Company to execute on its behalf and in its name any such confirmatory instrument.

**ARTICLE TEN****SATISFACTION AND DISCHARGE**

**Section 10.01 - Cancellation and Destruction.** All matured Debentures shall forthwith after payment thereof be delivered to the Trustee and cancelled by it and no Debentures shall be issued in substitution therefor. All Debentures cancelled or required to be cancelled under this or any other provision of this indenture shall be destroyed by the Trustee and the Trustee shall furnish to the Company a destruction certificate setting out the designating number and denominations of the Debentures so destroyed.

**Section 10.02 - Non-Presentation of Debentures.** In case the holder of any Debenture shall fail to present the same for payment on the date on which the principal thereof and/or the interest thereon or represented thereby becomes payable either at maturity, on redemption or otherwise or shall not accept payment on account thereof and give such receipt therefor, if any, as the Trustee may require:

- (a) the Company shall be entitled to pay to the Trustee and direct it to set aside, or
- (b) in respect of moneys in the hands of the Trustee which may or should be applied to the payment of the Debentures, the Company shall be entitled to direct the Trustee to set aside, or
- (c) if the redemption was pursuant to notice given by the Trustee, the Trustee may itself set aside,

the principal moneys and/or the interest, as the case may be, in trust to be paid to the holder of such Debenture upon due presentation or surrender thereof in accordance with the provisions of this indenture and thereupon the principal moneys and/or the interest payable on or represented by each Debenture in respect whereof such moneys have been set aside shall be deemed to have been paid and the holder thereof shall thereafter have no right in respect thereof except that of receiving payment of the moneys so set aside by the Trustee upon due presentation and surrender thereof, subject always to the provisions of Section 10.03.

**Section 10.03 - Repayment of Unclaimed Moneys to Company.** Any moneys set aside under Section 10.02 and not claimed by and paid to the holders of the Debentures as provided in section 10.02 within six years after the date of such setting aside shall be repaid to the Company by the Trustee on demand and thereupon the Trustee shall be released from all further liability with respect to such moneys and thereafter the holders of such Debentures shall have no rights in respect thereof except to obtain payment of the moneys due thereon from the Company.

**Section 10.04 - Discharge of Security.**

(1) Upon proof being given to the reasonable satisfaction of the Trustee that all the Debentures and interest (including interest on amounts in default) thereon and other moneys secured hereby have been paid or that, all the outstanding Debentures having matured or having been duly called for redemption, or the Trustee having been given irrevocable instructions by the Company to publish within 90 days notice of redemption of all outstanding Debentures, and such payment and/or redemption has been duly and effectually provided for by payment to the Trustee or otherwise, and upon payment of all costs, charges, and expenses properly incurred by the Trustee in relation to this indenture and all interest thereon and the remuneration of the Trustee, or upon provision satisfactory to the Trustee being made therefor, the Trustee shall, at the request and at the expense of the Company, execute and deliver to the Company such deeds or other instruments as shall be requisite to evidence the satisfaction and discharge of the security hereby created, to release or reconvey the Mortgaged Property to the Company freed and discharged from the trusts and provisions herein contained except those relating to the indemnification of the Trustee.

(2) The registrar of any registration division in which any properties affected by this indenture are situate shall radiate and discharge and cancel the registration of any hypothec, mortgage, pledge, charge, cession or transfer created hereby or hereafter created under the provisions hereof, upon the registration of any acquittance, discharge, release, main levee or document to that effect signed by the Trustee, without being obliged to see that any of the conditions of this indenture have been fulfilled.

## ARTICLE ELEVEN

### SUCCESSOR COMPANIES

**Section 11.01 - Certain Requirements.** The Company shall not engage in any transaction whereby all or substantially all of the Mortgaged Property would become the property of any other company (herein called a "successor company") whether by way of reconstruction, reorganization, consolidation, amalgamation, merger, transfer, sale or otherwise unless:

(1) the successor company is a company incorporated under the laws of Canada or one of its provinces and approved by all Debenture holders;

(2) the successor company shall execute, prior to or contemporaneously with the consummation of such transaction, such instruments as are satisfactory to the Trustee and in the opinion of Counsel are necessary or advisable to effect and evidence the assumption by the successor company of the due and punctual payment of all Debentures and interest thereon and all other moneys payable hereunder and the covenant of the successor company to pay the same and its agreement to observe and perform all the covenants and obligations of the Company under this indenture and the Debentures;

(3) such transaction shall to the satisfaction of the Trustee and in the opinion of Counsel be upon such terms as are in no way prejudicial to the interests of the Debenture holders, and as substantially to preserve and not to impair the security constituted by this indenture, any of the rights and powers of the Trustee or of the Debenture holders hereunder or the assets or business of the Company;

(4) no condition or event shall exist as to the Company or the successor company, either at the time of or immediately after such reconstruction, reorganization, consolidation, amalgamation, merger, transfer, sale or other transaction and after giving full effect thereto or immediately after the successor company's complying with the provisions of subsection (2) above, which constitutes a default hereunder; and

(5) there shall be delivered such statutory declarations, opinions, reports, certificates and other documents as may be required by the Trustee.

**Section 11.02 - Vesting of Powers in Successor.** Whenever the conditions of Section 11.01 have been duly observed and performed the successor company shall possess and from time to time may exercise each and every right and power of the Company under this indenture in the name of the Company or otherwise and any act or proceeding by any provision of this indenture required to be done

or performed by the directors or any officers of the Company may be done and performed with like force and effect by the directors or the like officer or officers of such successor company.

## ARTICLE TWELVE

### MEETINGS OF DEBENTURE HOLDERS

**Section 12.01 - Interpretation.** In the remaining provisions of this Article Twelve:

- (i) "principal amount" with respect to any Class B Debenture shall mean the present value of the principal amount of such Debenture, such present value to be determined by discounting the principal amount to the date of a meeting at a discount rate equal to the Canada Bond Rate (determined separately for each Class B Debenture) plus 1.00%, calculated at a date 10 Banking Days before the meeting; and
- (ii) if there are no outstanding Class A Debentures or Class B Debentures, any reference to "Class A Debenture" and "Class B Debenture" shall be deemed to be a reference to "Class C Subordinated Debenture".

**Section 12.02 - Right to Convene Meeting.** The Trustee may at any time and from time to time and shall on receipt of a written request of the Company or a Debenture holders' Request and upon being indemnified to its satisfaction by the Company or by the Debenture holders signing such Request against the costs which may be incurred in connection with the calling and holding of such meeting, convene a meeting of the Debenture holders. If the Trustee fails within 30 days after receipt of such written request or Debenture holders' Request and such indemnity to give notice convening a meeting, the Company or such Debenture holders, as the case may be, may convene such meeting. Every such meeting shall be held in the City of Calgary, subject to any Debenture holders' Request to the contrary, or at such other place as may be approved or determined by the Trustee.

**Section 12.03 - Notice of Meetings.** At least 15 days' notice of any meeting shall be given to the Debenture holders in the manner provided in Section 15.03 and a copy thereof shall be sent to the Trustee unless the meeting has been called by it and to the Company unless the meeting has been called by it. Such notice shall state the time when and the place where the meeting (and any adjournment thereof pursuant to Section 12.06) is to be held and shall state briefly the general nature of the business to be transacted thereat and it shall not be necessary for any such notice to set out the terms of any resolution to be proposed or any of the provisions of this Article.

**Section 12.04 - Chairman.** Some person, who need not be a Debenture holder, nominated in writing by the Trustee shall be chairman of the meeting and if no person is so nominated, or, if the person so nominated is not present within 15 minutes from the time fixed for the holding of the meeting, the Class A Debenture holders and the Class B Debenture holders present in

person or by proxy shall choose some person present to be chairman.

**Section 12.05 - Quorum.** At any meeting of the Debenture holders other than a meeting convened for the purpose of considering a resolution proposed to be passed as an extraordinary resolution, as to which the provisions of Section 12.13 shall be applicable, a quorum shall consist of Class A Debenture holders and Class B Debenture holders present in person or by proxy and representing at least 25% in aggregate principal amount of the outstanding Class A Debentures and the Class B Debentures.

**Section 12.06 - Power to Adjourn.** The chairman of any meeting at which a quorum of the Debenture holders is present may with the consent of the holders of a majority in principal amount of the Class A Debentures and Class B Debentures represented thereat adjourn any such meeting and no notice of such adjournment need be given except such notice, if any, as the meeting may prescribe.

**Section 12.07 - Show of Hands.** Every question submitted to a meeting shall be decided in the first place by a majority of the votes given on a show of hands by the Class A Debenture holders and Class B Debenture holders except that votes on extraordinary resolutions shall be given in the manner hereinafter provided. At any such meeting, unless a poll is duly demanded as herein provided, a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact.

**Section 12.08 - Poll.** On every extraordinary resolution, and on any other question submitted to a meeting when demanded by the chairman or by one or more Class A Debenture holders or Class B Debenture holders and/or proxies for such Debenture holders holding at least \$1,000,000 principal amount of Debentures, a poll shall be taken in such manner and either at once or after an adjournment as the chairman shall direct. Questions other than extraordinary resolutions shall if a poll be taken be decided by the votes of the holders of a majority in principal amount of the Class A Debentures and the Class B Debentures represented at the meeting and voted on the poll.

**Section 12.09 - Voting.** On a show of hands every person who is present and entitled to vote, whether as a Class A Debenture holder or Class B Debenture holder or as proxy for one or more such Debenture holders or both, shall have one vote. On a poll each Class A Debenture holder and Class B Debenture holder present in person or represented by a proxy duly appointed by an instrument in writing shall be entitled to one vote in respect of each \$1,000 principal amount of the Debentures of which he shall then be the holder. A proxy need not be a Debenture holder. In the case of joint registered holders of a Debenture, any one of them present in person or by proxy at the meeting may



vote in the absence of the other or others; but in case more than one of them be present in person or by proxy, they shall vote together in respect of the Debentures of which they are joint registered holders.

**Section 12.10 Regulations.** The Trustee or the Company with the approval of the Trustee may from time to time make and from time to time vary such regulations as it shall think fit providing for any or all of the following:

- (1) the deposit of unregistered Debentures with any bank or trust company or any other Person satisfactory to the Trustee, and the issue to the Persons so depositing Debentures of certificates by such bank or trust company or other Person that such Debentures have been so deposited, which certificates shall entitle the holders thereof to be present and vote (depending on the class) at any such meeting, and at any adjournment thereof, and to appoint proxies to represent them and vote for them at any such meeting, and at any adjournment thereof, in the same way as if the Persons so present and voting either in person or by proxy were the actual bearers of the Debentures in respect of which such certificates shall have been issued;
- (2) the form of the instrument appointing proxies and the manner in which the same shall be executed and the production of the authority of any Person signing on behalf of a Debenture holder;
- (3) for the deposit of such deposit certificates and/or instruments appointing proxies at such place as the Trustee, the Company or the Debenture holders convening the meeting, as the case may be, may in the notice convening the meeting direct and the time, if any, before the holding of the meeting or any adjournment thereof by which the same shall be deposited; and
- (4) for the deposit of such deposit certificates and/or instruments appointing proxies at some approved place or places other than the place at which the meeting is to be held and enabling particulars of such instruments appointing proxies to be mailed, cabled, telecopied or sent by telex before the meeting to the Company or to the Trustee at the place where the same is to be held and for the voting of proxies so deposited as though the instruments themselves were produced at the meeting.

Any regulation so made shall be binding and effective and the votes given in accordance therewith shall be valid and shall be counted. Save as such regulations may provide, the

only Persons who shall be recognized at any meeting as the holders of any Debentures, or as entitled to vote or be present at the meeting in respect thereof, shall be registered Debenture holders and Persons whom registered Debenture holders have by instrument in writing duly appointed as their proxies and Persons who produce unregistered Debentures at the meeting.

**Section 12.11 - Company and Trustee May be Represented.**

At any meeting of Debenture holders convened by the Trustee pursuant to Section 12.02, the Company and the Trustee, by their respective officers and directors, and the legal advisors of the Company and the Trustee may attend any meeting of the Debenture holders, but shall have no vote as such.

**Section 12.12 - Powers Exercisable by Extraordinary Resolution.**

In addition to all other powers conferred under any provision of this indenture or by law, the Class A Debenture holders and the Class B Debenture holders shall have the following powers exercisable from time to time only by extraordinary resolution:

- (a) power to sanction any change whatsoever in any of the provisions of this indenture or any Debenture and any modification, abrogation, alteration, compromise or arrangement of the rights of any Class A or Class B Debenture holders (or Class C Subordinated Debenture holders with the consent of such holders) and/or the Trustee against the Company or against any of its respective undertaking, properties, rights, and assets or any part thereof, whether such rights arise under this indenture or the Debentures or otherwise; provided, however, that in respect of any modification, abrogation, alteration, compromise or arrangement of the rights of any Class A or Class B Debenture holders, the extraordinary resolution must be approved in the manner described in Section 12.13 by both the Class A Debenture holders and the Class B Debenture holders voting separately as classes;
- (b) power to sanction any scheme for the reconstruction or reorganization of the Company or for the consolidation, amalgamation or merger of the Company with or into any other company or for the selling or leasing of the undertaking, property and assets of the Company or any part thereof, provided that no such sanction shall be necessary in respect of any such transaction if the provisions of Article Eleven shall have been complied with;
- (c) power to sanction the release of the Company and of the whole or any part of the Mortgage Property from the Lien hereof;
- (d) power to direct or authorize the Trustee to exercise any power, right, remedy or authority given to it by

this indenture or the Debentures in any manner specified in such extraordinary resolution or to refrain from exercising any such power, right, remedy or authority;

- (e) power to waive and direct the Trustee to waive any default hereunder either unconditionally or upon any conditions specified in such extraordinary resolution, whether or not the security hereof shall have become enforceable by reason of such default;
- (f) power to restrain any Debenture holder from taking or instituting any suit, action or proceeding for the enforcement or execution of any trust, power or right hereunder or under any Debenture;
- (g) power to direct any Debenture holder who has brought any action, suit or proceeding to stay or discontinue or otherwise deal with the same upon payment, unless the taking of such suit, action or proceeding shall be prohibited by Section 9.05 hereof, of the costs, charges, and expenses reasonably and properly incurred by such Debenture holder in connection therewith;
- (h) power to amend, alter or repeal any extraordinary resolution;
- (i) power to remove the Trustee from office and to appoint a new trustee or trustees; and
- (j) power to appoint and remove a committee to consult with the Trustee and to delegate to such committee (subject to such limitations, if any, as may be prescribed in such extraordinary resolution) all or any of the powers which the Debenture holders could exercise by extraordinary resolution under the foregoing subsections (d), (e), (f) and (g). The extraordinary resolution making such appointment may provide for payment of the expenses and disbursements of and compensation to such committee. Such committee shall consist of such number of persons as shall be prescribed in the extraordinary resolution appointing it, and the members need not be themselves Debenture holders. Subject to the extraordinary resolution appointing it, every such committee may elect its chairman and may make regulations respecting its quorum, the calling of its meetings, the filling of vacancies occurring in its number, the manner in which it may act and its procedure generally and such regulations may provide that the committee may act at a meeting at which a quorum is present or may act by minutes signed by a majority of the members thereof or the number of members thereof necessary to constitute a quorum, whichever is the greater. All acts of any such

committee within the authority delegated to it shall be binding upon all Debenture holders.

Provided that no extraordinary resolution or other act taken by meeting of Debenture holders shall extend to or be taken in any manner whatsoever to affect any subsequent default under this indenture or the Debentures or the rights resulting therefrom.

**Section 12.13 - Meaning of "extraordinary resolution".**

(1) The expression "extraordinary resolution" when used in this indenture means, subject as hereinafter in this Article provided, a resolution proposed to be passed as an extraordinary resolution at a meeting of Debenture holders duly convened for the purpose and held in accordance with the provisions of this Article at which the holders of at least 51% in principal amount of the Class A Debentures and the Class B Debentures then outstanding are present in person or by proxy and passed by the favourable votes of the holders of not less than 66 2/3% of the principal amount of Class A Debentures and the Class B Debentures represented at the meeting and voted on a poll upon such resolution.

(2) If, at any such meeting, the holders of 51% in principal amount of the Class A Debentures and the Class B Debentures outstanding are not present in person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on a Debenture holders' Request, shall be dissolved; but in any other case it shall stand adjourned to such date, being not less than 21 nor more than 60 days later, and to such place and time as may be appointed by the chairman. Not less than 10 days' notice shall be given of the time and place of such adjourned meeting in the manner provided in Article Fifteen. Such notice shall state that at the adjourned meeting the Class A Debenture holders and the Class B Debenture holders present in person or by proxy shall form a quorum but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting the Class A Debenture holders and the Class B Debenture holders present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed by the requisite vote as provided in clause (1) of this Section 12.13 shall be an extraordinary resolution within the meaning of this indenture, notwithstanding that the holders of 51% in principal amount of the Class A Debentures and Class B Debentures then outstanding are not present in person or by proxy at such adjourned meeting.

**Section 12.14 - Powers Cumulative.** It is hereby declared and agreed that any one or more of the powers and/or any combination of the powers in this indenture stated to be exercisable by the Debenture holders by extraordinary resolution or otherwise may be exercised from time to time and the exercise of any one or more

of such powers or any combination of powers from time to time shall not be deemed to exhaust the right of the Debenture holders to exercise the same or any other such power or powers or combination of powers thereafter from time to time.

**Section 12.15 - Minutes.** Minutes of all resolutions and proceedings at every meeting as aforesaid shall be made and duly entered in books to be from time to time provided for that purpose by the Trustee at the expense of the Company, and any such minutes as aforesaid, if signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting of the Debenture holders, shall be prima facie evidence of the matters therein stated and, until the contrary is proved, every such meeting, in respect of the proceedings of which minutes shall have been made, shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had, to have been duly passed and had.

**Section 12.16 - Instruments in Writing.** All actions which may be taken and all powers that may be exercised by a percentage of the Debenture holders present at a meeting held as hereinbefore in this Article provided may also be taken and exercised by the holders of the same percentage of the principal amount of all outstanding Debentures by an instrument in writing signed in one or more counterparts and the expression "extraordinary resolution" when used in this indenture shall include an instrument so signed.

**Section 12.17 - Binding Effect of Resolutions.** Every resolution and every extraordinary resolution passed in accordance with the provisions of this Article at a meeting of Debenture holders shall be binding upon all the Debenture holders, whether present at or absent from such meeting, and every instrument in writing signed by Debenture holders in accordance with Section 12.16 shall be binding upon all the Debenture holders, whether signatories thereto or not, and each and every Debenture holder and the Trustee (subject to the provisions for its indemnity herein contained) shall be bound to give effect accordingly to every such resolution, extraordinary resolution and instrument in writing.

**ARTICLE THIRTEEN**  
**CONCERNING THE TRUSTEE**

**Section 13.01 - Trust Indenture Legislation.**

(1) In this Article Thirteen, the term "Applicable Legislation" means the provisions, if any, of the Canada Business Corporations Act, and any other statute of Canada or a province thereof, and of regulations under any such statute, relating to trust indentures and to the rights, duties, and obligations of trustees under trust indentures and of corporations issuing debt obligations under trust indentures to the extent that such provisions are at the time in force and applicable to this indenture.

(2) If and to the extent that any provision of this indenture limits, qualifies or conflicts with a mandatory requirement of Applicable Legislation, such mandatory requirement shall prevail.

(3) The Company and the Trustee agree that each will at all times in relation to this indenture and any action to be taken hereunder observe and comply with and be entitled to the benefits of Applicable Legislation.

**Section 13.02 - Rights and Duties of Trustee.**

(1) In the exercise of the rights and duties prescribed or conferred by the terms of this indenture, the Trustee shall exercise that degree of care, diligence, and skill that a reasonably prudent trustee would exercise in comparable circumstances.

(2) Subject only to subsection (1) of this Section 13.02, the obligation of the Trustee to commence or continue any act, action or proceeding for the purpose of enforcing any rights of the Trustee or the Debenture holders hereunder shall be conditional upon the Debenture holders' furnishing, when required by notice in writing by the the Trustee, sufficient funds to commence or continue such act, action or proceeding and indemnity reasonably satisfactory to the Trustee to protect and hold harmless the Trustee against the costs, charges, expenses and liabilities to be incurred thereby and any loss and damage it may suffer by reason thereof. None of the provisions contained in this indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers unless indemnified as aforesaid.

(3) The Trustee may, before commencing or at any time during the continuance of any such act, action or proceeding, require the Debenture holders at whose instance it is acting to deposit with the Trustee the Debentures held by them, for which Debentures the Trustee shall issue receipts.

(4) Before consenting to any change in the Shareholders Agreement or appointing a director of the Company pursuant to the terms of the Shareholders Agreement, the Trustee shall obtain the approval of such action by the Debenture holders in the form of an extraordinary resolution.

**Section 13.03 - Evidence, Experts, and Advisers.**

(1) In addition to the reports, certificates, opinions, and other evidence required by this indenture, the Company shall furnish to the Trustee such additional evidence of compliance with any provision hereof, and in such form, as may be prescribed by Applicable Legislation or as the Trustee may reasonably require by written notice to the Company.

(2) In the exercise of its rights and duties, the Trustee may, if it is acting in good faith, rely as to the truth of the statements and the accuracy of the opinions expressed therein, upon statutory declarations, opinions, reports, certificates or other evidence furnished to the Trustee pursuant to any provision hereof provided that such evidence complies with Applicable Legislation and that the Trustee examines the same and determines that such evidence complies with the applicable requirements of this indenture.

(3) Whenever Applicable Legislation requires that evidence referred to in subsection (1) of this Section 13.03 be in the form of a statutory declaration, the Trustee may accept such statutory declaration in lieu of a certificate of the Company required by any provision hereof. Any such statutory declaration may be made by one or more of the officers or directors of the Company.

(4) Proof of the execution of an instrument in writing, including a Debenture holder's Request, by any Debenture holder may be made by the certificate of a notary public, or other officer with similar powers, that the person signing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution or in any other manner which the Trustee may consider adequate.

(5) The Trustee may employ or retain such counsel, accountants, engineers, appraisers or other experts or advisers as it may reasonably require for the purpose of discharging its duties hereunder and may pay reasonable remuneration for all services so performed by any of them, without taxation of costs of any counsel, and shall not be responsible for any misconduct on the part of any of them.

**Section 13.04 - Documents, Money, etc. Held by Trustee.**

Any securities, documents of title or other instruments that may at any time be held by the Trustee subject to the trusts hereof may be placed in the deposit vaults of the Trustee or of any Canadian chartered bank or deposited for safekeeping with any

such bank. Unless herein otherwise expressly provided, any moneys so held, pending the application or withdrawal thereof under any provisions of this indenture, may be deposited in the name of the Trustee in any bank (the deposits of which are permitted as Eligible Investments hereunder) at the rate of interest (if any) then current on similar deposits or, with the consent of the Company, may be invested in Eligible Investments (excluding investments designated by the Trustee). Unless a default shall have occurred and be continuing, all interest or other income received by the Trustee in respect of such deposits and investments (including, without limitation, deposits and investments of moneys referred to in Section 10.02) shall belong to the Company.

**Section 13.05 - Action by Trustee to Protect Interests.**

The Trustee shall have the power to institute and to maintain such actions and proceedings as it may consider necessary or expedient to preserve, protect or enforce its interests and the interests of the holders of Debentures.

**Section 13.06 - Trustee Not Required to Give Security.**

The Trustee shall not be required to give any bond or security in respect of the execution of the trusts and powers of this indenture or otherwise in respect of the premises.

**Section 13.07 - Protection of Trustee.** By way of supplement to the provisions of any law for the time being relating to trustees, it is expressly declared and agreed as follows:

- (1) the Trustee shall not be liable for or by reason of any statements of fact or recitals in this indenture or in the Debentures (except the representation contained in Section 13.09 and in the certificate of the Trustee on the Debentures) or required to verify the same, but all such statements or recitals are and shall be deemed to be made by the Company;
- (2) nothing herein contained shall impose any obligation on the Trustee to see to or to require evidence of the registration or filing (or renewal thereof) of this indenture or any instrument ancillary or supplemental hereto;
- (3) the Trustee shall not be bound to give notice to any Person or Persons of the execution hereof or of the Lien hereof or in any way to interfere with the conduct of the Company's business, unless and until the Lien hereof shall have become enforceable and the Trustee shall have become bound to enforce the same;
- (5) the Trustee shall not incur any liability or responsibility whatever or be in any way responsible for the consequence of any breach on the part of the Company of any of the covenants herein contained or of any acts of the agents or servants of the Company; and



- (6) the Trustee shall not nor shall its agents or attorneys be liable by reason of any entry into possession of the Mortgaged Property of any part thereof to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession might be liable save such as may be caused by its own negligence or wilful misconduct.

**Section 13.08 - Replacement of Trustee.** The Trustee may resign its trust and be discharged from all further duties and liabilities hereunder by giving to the Company not less than 90 days notice in writing or such shorter notice as the Company may accept as sufficient. The Class A Debenture holders and the Class B Debenture holders or, if there are no outstanding Class A Debentures or Class B Debentures, the Class C Subordinated Debenture holders by extraordinary resolution shall have the power at any time to remove the Trustee and to appoint a new Trustee. If the Trustee resigns or is removed as aforesaid or is dissolved, becomes bankrupt, goes into liquidation or otherwise becomes incapable of acting hereunder, the Company shall forthwith appoint a new Trustee unless a new Trustee has already been appointed by the Class A Debenture holders and the Class B Debenture holders or, if there are no outstanding Class A Debentures or Class B Debentures, the Class C Subordinated Debenture holders; failing such appointment by the Company, the retiring Trustee or any Class A Debenture holder or Class B Debenture holder or any Class C Subordinated Debenture holder may apply to a Judge of the Supreme Court of Ontario, on such notice as such Judge may direct, for the appointment of a new Trustee; but any new Trustee so appointed by the Company or by the Court shall be subject to removal as aforesaid by the Class A Debenture holders and the Class B Debenture holders or, if there are no outstanding Class A Debentures or Class B Debentures, the Class C Subordinated Debenture holders. Any new Trustee appointed under these provisions shall be a corporation authorized to carry on the business of a trust company in the provinces of Alberta, Ontario, and Quebec. On any new appointment the new Trustee shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named herein as Trustee, without any further assurance, conveyance, act or deed; but there shall be immediately executed, at the expense of the Company, all such conveyances or other instruments as may, in the opinion of Counsel, be necessary or advisable for the purpose of assuring the same to the new Trustee.

**Section 13.09 - Conflict of Interest.**

(1) The Trustee represents to the Company that at the time of the execution and delivery hereof no material conflict of interest exists in the Trustee's role as a fiduciary hereunder and agrees that if a material conflict of interest arises hereafter it will, within 90 days after ascertaining that it has

such material conflict of interest, either eliminate the same or resign its trust hereunder.

(2) Subject to clause (1) of this Section 13.09 the Trustee, in its personal or any other capacity, may buy, lend upon, and deal in securities of the Company and generally may contract and enter into financial transactions with the Company without being liable to account for any profit made thereby.

**Section 13.10 - Acceptance of Trust.** The Trustee hereby accepts the trusts in this indenture declared and provided for and agrees to perform the same upon the terms and conditions herein set forth.

**ARTICLE FOURTEEN**

**SUPPLEMENTAL INDENTURES**

**Section 14.01 - Supplemental Indentures.** From time to time the Trustee and the Company may, when authorized by a resolution of the directors, and they shall, when required by this indenture, execute, acknowledge, and deliver by their proper officers deeds or indentures supplemental hereto, which thereafter shall form part hereof, for any one or more of the following purposes:

(1) charging in favour of the Trustee any property now owned or hereafter acquired by the Company; and in the case of property in the Province of Quebec, hypothecating, pledging and charging the same in favour of the Trustee;

(2) adding to the limitations or restrictions herein specified further limitations or restrictions, thereafter to be observed, upon the amount or issue of Debentures hereunder or upon the dealing with the property of the Company, or otherwise; provided that the Trustee shall be of the opinion that such further limitations or restrictions shall not be prejudicial to the interests of the Debenture holders;

(3) adding to the covenants of the Company herein contained for the protection of the Debenture holders and/or providing for Events of Default in addition to those herein specified;

(4) making such provisions not inconsistent with this indenture as may be necessary or desirable with respect to matters or questions arising hereunder, including the making of any modifications in the form of any series of any class of Debentures which do not affect the substance thereof and which, in the opinion of the Trustee, it may be expedient to make, provided that the Trustee shall be of the opinion that such provisions and modifications will not be prejudicial to the interest of any of the Debenture holders;

(5) evidencing the succession, or successive successions, of other companies to the Company and the covenants of and obligations assumed by any such successor in accordance with the provisions of Article Eleven of this indenture;

(6) providing for the issue, as permitted hereby, of Debentures of any one or more series of the Class A Debentures, the Class B Debentures and the Class C Subordinated Debentures;

(7) giving effect to any extraordinary resolution passed as provided in Article Twelve; and

(8) for any other purpose not inconsistent with the terms of this indenture.

The Trustee may also, without the consent or concurrence of the Class A Debenture holders and Class B Debenture holders, by supplemental indenture or otherwise, concur with the Company in making any changes or corrections in this indenture which it shall have been advised by Counsel are required for the purpose of curing and correcting any ambiguity or defective or inconsistent provisions or clerical omission or mistake or manifest error contained herein or in any deed or indenture supplemental or ancillary hereto, provided that in the opinion of the Trustee the rights of the Trustee and of the Debenture holders are in no way prejudiced thereby.

ARTICLE FIFTEEN  
NOTICES

Section 15.01 - Notice to Company. Any notice or other communication to the Company under the provisions of this indenture shall be in writing and may be delivered personally or sent by prepaid mail, telex or telecopier to the following mailing, telex or telecopier address, as applicable:

SLX Canada Inc.  
1500 Bow Valley Square IV  
250 6th Avenue S.W.  
Calgary, Alberta  
T2P 3H7  
Attention: President  
Telex: 03-825570 Answerback WCBC CGY  
Telecopier: (403) 264-1262

and to:

Bennett Jones  
3200 Shell Centre  
400 4th Avenue S.W.  
Calgary, Alberta  
T2P 0X9  
Attention: Mr. Peter A. Williams  
Telex: 03824524  
Telecopier: (403) 265-7219

Any such notice or other communication if personally delivered or mailed or telecopied, shall be deemed to have been given when received and, if telexed and the appropriate answerback received, shall be deemed received at the time that the answerback is received. The Company may from time to time notify the Trustee in writing of a change of mailing, telex or telecopier address in the manner set forth herein which thereafter, until changed by like notice, shall be the address of the Company for all purposes of this indenture.

Section 15.02 - Notice to Trustee. Any notice or other communication to the Trustee under the provisions of this indenture shall be in writing and may be delivered personally or sent by prepaid mail, telex or telecopier to the following mailing, telex or telecopier address, as applicable:

The Royal Trust Company  
P.O. BOX 7500  
Station A  
Toronto, Ontario  
M5W 1P9  
Attention: Vice-President, Corporate Trust Services  
Telex: 06524306  
Telecopier: (416) 947-9945

Any such notice or other communication if personally delivered or mailed or telecopied, shall be deemed to have been given when received and, if telexed and the appropriate answerback received, shall be deemed received at the time that the answerback is received. The Trustee may from time to time notify the Company in writing of a change of mailing, telex or telecopier address in the manner set forth herein which thereafter, until changed by like notice, shall be the address of the Trustee for all purposes of this indenture.

Section 15.03 - Notice to Debenture Holders. Any notice or other communication to the Debenture holders under the provisions of this indenture shall be in writing and may be delivered personally or sent by prepaid mail, telex or telecopier to such holder at his or its mailing, telex or telecopier address, as applicable, appearing on the register above mentioned. Any such notice or other communication if personally delivered or mailed or telecopied, shall be deemed to have been given when received and, if telexed and the appropriate answerback received, shall be deemed received at the time that the answerback is received. Any holder of a Debenture may from time to time notify the Trustee and the Company in writing of a change of mailing, telex or telecopier address in the manner set forth herein which thereafter, until changed by like notice, shall be the address of such holder for all purposes of this indenture.

**ARTICLE SIXTEEN****MISCELLANEOUS**

**Section 16.01 - No Waiver.** This indenture may not be amended except by a writing executed by the Trustee and the Company. Any indulgence or forbearance or failure by the Trustee to insist on the strict and timely performance of any provision of this indenture shall not affect the future right of the Trustee to insist on the strict and timely performance of the same or any other provision of this indenture thereafter.

**Section 16.02 - No Merger.** The acceptance and holding of this indenture shall not constitute any merger or in any way limit or affect the rights of the Trustee under any other security held for the payment and performance of any indebtedness or liability of the Company.

**Section 16.03 - Banking Day.** If the date upon which any act or payment hereunder or under a Debenture is required to be done or made falls on a day which is not a Banking Day, then such act or payment shall be duly performed or made if done on the next following Banking Day.

**Section 16.04 - Remedies Subject to Applicable Law.** All rights, remedies and powers provided herein may be exercised or enforced only to the extent that the exercise or enforcement thereof does not violate any applicable provision of law and all the provisions of this indenture are intended to be subject to all applicable mandatory provisions of law which may be controlling in the circumstances and to be limited to the extent necessary so that they will not render this indenture invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. Any provision hereof contrary to applicable law shall be deemed to be ineffective and shall be severable from and not invalidate any other provision of this indenture.

**Section 16.05 - Company Waiver.**

(1) To the extent permitted by law, the Company hereby waives all its rights, benefits or protection given to it by Sections 47, 49 and 50 of The Law of Property Act and the Seizure Act of the Province of Alberta, insofar as they extend to or relate to the Lien hereof. The Company hereby acknowledges that seizure of any of the Mortgaged Property shall not, by implication of law, extinguish the Company's indebtedness under any Debenture or other collateral security. The Company hereby confers upon the Debenture holders and the Trustee the right to recover from the Company by action on covenant for the payment contained in any Debenture or in any other security collateral thereto the full principal and interest payable under such Debenture and all other money from time to time due thereunder or hereunder or under any other collateral security, notwithstanding any seizure or repossession.

(2) The Company covenants and agrees with the Trustee and all Debenture holders that The Limitation of Civil Rights Act of the Province of Saskatchewan shall have no application to

(a) the Lien hereof; or

(b) the rights, powers or remedies of the Trustee under this indenture.

**Section 16.06 - Non-Disclosure.** No Debenture holder shall make any disclosure to third parties (other than the Trustee and other Debenture holders) or to the public of any confidential information or data relating to the operations of the Company except with the approval of the Company but this provision shall not prohibit any disclosure to professional advisors or to the extent required by regulatory authorities. Each Debenture holder shall take such action as may be requisite, including the obtaining of non-disclosure agreements, to prevent the communication by its employees to third parties, or the improper use by its employees, of any confidential information of the Company.

**Section 16.07 - Severability.** Any Section of this indenture which is illegal, invalid, unenforceable or prohibited in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining Sections hereof, and any prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such Section in any other jurisdiction.

**Section 16.08 - Counterparts.** This indenture may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

**Section 16.09 - Formal Date.** For the purpose of convenience this indenture may be referred to as bearing formal date of September 15, 1988 regardless of the actual date of execution hereof.

**Section 16.10 - Copy of indenture.** The Company acknowledges receipt of a copy of this indenture.

**Section 16.11 - English Language.** The parties hereto have required that this indenture and all documents and notices related thereto and/or resulting therefrom be drawn up in English. Les parties aux présentes ont exigé que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en découleront soient rédigés en langue anglaise.



IN WITNESS WHEREOF the parties hereto have executed this indenture under seal attested by the hands of their proper officers in that behalf.

SLX CANADA INC.

By:

Paul D. Miller  
Director

c/s

By:

B. Brumley  
Director

THE ROYAL TRUST COMPANY

By:

[Signature]  
Authorized Signatory

c/s

By:

K. Byler  
Authorized Signatory

Schedule A - Class A Form  
Schedule B - Class C Form  
Schedule C - Lease Agreement  
Schedule D - Company New Issue Test Certificate  
Schedule E - Class C New Issue Test Certificate

**SCHEDULE A**

**FORM OF SERIES 88-1 CLASS A DEBENTURES**

**SLX CANADA INC.**

(Incorporated under the laws of Canada)

Series 88-1 Class A Debenture

Due on October 1, 2003

NO.

\$

SLX CANADA INC. (hereinafter referred to as the "Company") for value received acknowledges itself indebted and hereby promises to pay to the registered holder hereof on the dates set out herein or on such earlier dates as the principal amount hereof may become due in accordance with the provisions of the trust indenture hereinafter mentioned, the principal sum of \$ in lawful money of Canada, and to pay interest on the principal amount hereof from the date of issue of this Debenture at the rate of 12% per annum (both before and after demand, default and judgment with interest on overdue interest at the same rate), accruing from day to day and compounded half-yearly, on the said principal amount remaining unpaid from time to time, and payable, without adjustment for advance payment of interest, on April 1, 1989 (the payment on such date to be composed of interest accrued from the date of issue to October 1, 1988 plus one-half year's interest from October 1, 1988 to April 1, 1989), on October 1, 1989 (the payment on such date to be one-half year's interest) and thereafter half-yearly on April 1 and October 1 of each year.

As interest and principal on this Debenture becomes due (except interest and principal payable at maturity or on redemption which shall be paid on presentation and surrender of this Debenture), the Company shall, prior to the day on which such amounts become due, forward or cause to be forwarded by prepaid post, to the registered holder for the time being hereof, or, in the case of joint holders to such joint holder whose name appears first in the register, at his registered address, a cheque on the Company's bank for such interest (less any tax required to be deducted), payable to the order of such registered holder or in the case of joint holders to the order of all such holders (failing written instructions from them to the contrary) and negotiable at par.

Notwithstanding the foregoing, if the Company, as permitted by the trust indenture hereinafter mentioned, shall have entered into an agreement with the holder of this Debenture with respect to the place and manner of payment of principal and interest on this Debenture, then such payment shall be made as provided in the said agreement.

This Debenture is one of a series, designated as Series 88-1 Class A Debentures of the Company, issued under the provisions of a trust indenture (herein called the "Trust Indenture") formally dated September 15, 1988 and made between the Company and The Royal Trust Company (hereinafter called the "Trustee") as trustee. By the Trust Indenture the Company has created a security interest in and mortgaged, pledged, assigned and charged, as and by way of a first floating charge, to and in favour of the Trustee, its successors and assigns, all its undertaking, property, rights and assets now owned or hereafter acquired by the Company, of whatsoever nature, kind or description and wherever situate. Reference is hereby made to the Trust Indenture and all indentures supplemental thereto for a description of the security created thereby, the terms and conditions upon which the Series 88-1 Class A Debentures are issued or may be issued, secured and held, the nature and extent of the security, and the rights of the holders of such Debentures and of the Company and of the Trustee, all to the same effect as if the provisions of the Trust Indenture and all indentures supplemental thereto were herein set forth, to all of which provisions the holder of this Debenture, by acceptance hereof, assents. Without limiting the generality of the foregoing, the holder of this Debenture, by acceptance hereof, acknowledges and assents to Section 9.19 of the Trust Indenture which limits the holder's recourse against any incorporator, shareholder, officer or director, past, present or future, of the Company and waives certain rights in relation to the payment of dividends by the Company and Section 16.06 of the Trust Indenture pursuant to which the holder agrees to certain non-disclosure restrictions.

The Series 88-1 Class A Debentures, of which this is one, are limited to an aggregate principal amount of \$15,000,000 in lawful money of Canada and mature on October 1, 2003, are issuable only as fully registered debentures in denominations of a minimum of \$150,000 with no set integrals thereafter, and are issued only upon the terms and subject to the restrictions set out in the Trust Indenture.

This Debenture ranks *pari passu* without discrimination, preference or priority with all Class A Debentures and Class B Debentures issued in accordance with the Trust Indenture irrespective of their actual dates or terms of issue.

The Series 88-1 Class A Debentures are subject to mandatory redemption on a pro rata basis under the terms of the Trust Indenture in accordance with the following schedule:

<u>Date</u>	<u>Amount</u>
April 1, 1997	\$500,000
October 1, 1997	\$500,000
April 1, 1998	\$500,000
October 1, 1998	\$500,000
April 1, 1999	\$1,250,000
October 1, 1999	\$1,250,000
April 1, 2000	\$1,250,000
October 1, 2000	\$1,250,000
April 1, 2001	\$1,250,000
October 1, 2001	\$1,250,000
April 1, 2002	\$1,250,000
October 1, 2002	\$1,250,000
April 1, 2003	\$1,250,000
October 1, 2003	\$1,750,000

Such amounts may be adjusted in accordance with the terms of the Trust Indenture upon any partial redemption pursuant to the terms thereof.

Subject to the terms and conditions of the Trust Indenture, this Debenture is redeemable at the option of the Company in whole or in part, at a price which is the greater of:

- a) 103% of the unpaid principal amount of this Debenture plus any accrued and unpaid interest thereon to the date fixed for redemption; or
- (b) an amount equal to the present value of all future interest and principal payments on this Debenture, such present value to be determined in accordance with the provisions of the Trust Indenture.

This Debenture is also subject to mandatory redemption in part upon the occurrence of certain events and notation of such partial redemption may be made on the reverse hereof, all as more fully provided in the Trust Indenture.

If this Debenture is called for redemption and payment hereof duly provided for, interest shall cease to accrue hereon from the date specified for redemption as provided in the Trust Indenture.

The principal amount hereof may also become or be declared due before the stated maturity in the events, and the manner, on the conditions and with the effect and at the times set forth in the Trust Indenture.

The Trust Indenture contains provisions for meetings of the holders of debentures issued by the Company in accordance with the Trust Indenture and for making binding upon all such holders resolutions passed at such meetings and instruments in writing signed by the holders of a specified percentage of specified classes of debentures, which resolutions and instruments may, among other things, sanction any change in the Trust Indenture or in the rights of any holders of debentures issued by the Company, all in accordance with the provisions of the Trust Indenture.

No transfer of this Debenture shall be valid unless made on one of the registers to be kept for that purpose at the principal office of the Trustee in the City of Toronto, Canada, and at such other place or places and/or by such other registrar or registrars (if any) as the Company may from time to time designate, by the registered holder hereof or his executors, administrators or other legal representatives or his or their attorney duly appointed by an instrument in writing in form and execution satisfactory to the Trustee and upon compliance with the conditions prescribed in the Trust Indenture and with such reasonable requirements as the Trustee and/or other registrar may prescribe, nor in the case where a new debenture is or debentures are issued upon such transfer, unless such transfer has been duly noted hereon by the Trustee or other registrar.

This Debenture shall not become obligatory for any purpose until it shall have been certified by or on behalf of the Trustee.

IN WITNESS WHEREOF this Debenture has been duly executed and the corporate seal of the Company affixed hereto.

Dated September , 1988

SLX CANADA INC.

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

(Form of Registration)

-----  
(No writing hereon except by the Trustee or other Registrar)  
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Date of Registry	In Whose Name Registered	Place of Registration	Signature of Registrar
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-----	-----	-----	-----
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TRUSTEE'S CERTIFICATE

This Debenture is one of the Series 88-1 Class A  
Debentures, due October 1, 2003, issued under the Trust  
Indenture within mentioned.

THE ROYAL TRUST COMPANY, TRUSTEE

By: \_\_\_\_\_  
Authorized Signatory

\* \* \*

**SCHEDULE B**

**FORM OF SERIES 88-1 CLASS C SUBORDINATED DEBENTURES**

**SLX CANADA INC.**

(Incorporated under the laws of Canada)

Series 88-1 Class C Subordinated Debenture

Due on October 1, 2013

NO.

\$

SLX CANADA INC. (hereinafter referred to as the "Company") for value received acknowledges itself indebted and hereby promises to pay to the registered holder hereof on October 1, 2013 or on such earlier date as the principal amount hereof may become due in accordance with the provisions of the trust indenture hereinafter mentioned, upon presentation and surrender of this Debenture, the principal sum of \$ in lawful money of Canada, and to pay interest on the principal amount hereof from the date of issue of this Debenture at the rate of 9.75% per annum (both before and after demand, default and judgment with interest on overdue interest at the same rate) accruing from day to day and calculated and compounded semi-annually on April 1 and October 1 of each year. Such interest shall be payable to the extent of two per cent per annum payable half-yearly in arrears on April 1, 1989 (the payment on such date to be composed of the two per cent per annum rate applied from September 21, 1988 to April 1, 1989), on October 1, 1989 (the payment on such date to be composed of the two percent per annum rate applied for one half-year) and thereafter half-yearly on April 1 and October 1 of each year. The balance of accrued and unpaid interest shall be paid on October 1, 2013 in lawful money of Canada. The Company shall prepay all or any part of the accrued and unpaid compound interest on this Debenture in accordance with the provisions in the trust indenture hereinafter mentioned.

As interest on this Debenture becomes due (except interest payable at maturity or on redemption which shall be paid on presentation and surrender of this Debenture), the Company shall prior to the day on which such interest becomes due, forward or cause to be forwarded by prepaid post to the registered holder for the time being hereof, or, in the case of joint holders to such joint holder whose name appears first in the register at his registered address, a cheque on the Company's bank for such interest (less any tax required to be deducted), payable to the order of such registered holder or in the case of joint holders to the order of all such holders (failing written instructions from them to the contrary) and negotiable at par.

Notwithstanding the foregoing, if the Company, as permitted by the trust indenture hereinafter mentioned, shall have entered into an agreement with the holder of this Debenture with respect to the place and manner of payment of principal and interest on this Debenture, then such payment shall be made as provided in the said agreement.

This Debenture is one of a series designated as Series 88-1 Class C Subordinated Debentures of the Company, issued under the provisions of a trust indenture (herein called the "Trust Indenture") formally dated September 15, 1988 and made between the Company and The Royal Trust Company (hereinafter called the "Trustee") as trustee. By the Trust Indenture the Company has created a security interest in and mortgaged, pledged, assigned and charged, as and by way of a first floating charge, to and in favour of the Trustee, its successors and assigns, all of its undertaking, property, rights and assets now owned or hereafter acquired by the Company, of whatsoever nature, kind or description and wherever situate. Reference is hereby made to the Trust Indenture and all indentures supplemental thereto for a description of the security created thereby, the terms and conditions upon which the Series 88-1 Class C Subordinated Debentures are issued or may be issued, secured and held, the nature and extent of the security, and the rights of the holders of such Debentures and of the Company and of the Trustee, all to the same effect as if the provisions of the Trust Indenture and all indentures supplemental thereto were herein set forth, to all of which provisions the holder of this Debenture, by acceptance hereof assents. Without limiting the generality of the foregoing, the holder of this Debenture, by acceptance hereof, acknowledges and assents to Section 9.19 of the Trust Indenture which limits the holder's recourse against any incorporator, shareholder, officer or director, past, present or future, of the Company and waives certain rights in relation to the payment of dividends by the Company and Section 16.06 of the Trust Indenture pursuant to which the holder agrees to certain non-disclosure restrictions.

The Series 88-1 Class C Subordinated Debentures, of which this is one, are limited to an aggregate principal amount of \$15,000,000 in lawful money of Canada and mature on October 1, 2013, are issuable only as fully registered debentures in denominations of a minimum of \$150,000 and multiples of \$10,000, and are issued only upon the terms and subject to the restrictions set out in the Trust Indenture.

The indebtedness payable in respect of or evidenced by this Debenture, including the principal thereof and interest thereon, shall be subordinate and junior in right of payment, to the extent and in the manner set forth in the Trust Indenture, to the prior payment in full of all indebtedness payable in respect of or evidenced by any Class A Debentures or Class B Debentures issued pursuant to the terms and conditions of the Trust Indenture including the principal thereof and interest thereon.



After October 1, 2003, subject to the terms and conditions of the Trust Indenture, the holder of this Debenture shall have the right at its option to require the Company to retract this Debenture upon the terms and conditions of the Trust Indenture. The retraction price shall be equal to the principal amount of this Debenture plus any accrued and unpaid interest thereon to the date fixed for retraction.

If this Debenture is called for retraction and payment hereof duly provided for, interest shall cease to accrue hereon from the date specified for retraction, as provided in the Trust Indenture.

The Trust Indenture contains provisions for meetings of the holders of debentures issued by the Company in accordance with the Trust Indenture and for making binding upon all such holders resolutions passed at such meetings and instruments in writing signed by the holders of a specified percentage of a certain specified classes of debentures, which resolutions and instruments may, among other things, sanction any change in the Trust Indenture or in the rights of any holders of debentures issued by the Company, all in accordance with the provisions of the Trust Indenture.

No transfer of this Debenture shall be valid unless made on one of the registers to be kept for that purpose at the principal office of the Trustee in the city of Toronto, and at such other place or places and/or by such other registrar or registrars (if any) as the Company may from time to time designate, by the registered holder hereof or his executors, administrators or other legal representatives or his or their attorney duly appointed by an instrument in writing in form and execution satisfactory to the Trustee and upon compliance with such requirements as the Trustee and/or other registrar may prescribe, nor in the case where a new debenture is or debentures are issued upon such transfer, unless such transfer has been duly noted hereon by the Trustee and/or other registrar.

This Debenture shall not become obligatory for any purpose until it shall have been certified by or behalf of the Trustee.

IN WITNESS WHEREOF this Debenture has been duly executed and the corporate seal of the Company affixed hereto.

Dated September , 1988.

SLX CANADA INC.

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

(Form of Registration)

(No writing hereon except by the Trustee or other Registrar)

Date of Registry	In Whose Name Registered	Place of Registration	Signature of Registrar

TRUSTEE'S CERTIFICATE

This Debenture is one of the Series 88-1 Class C Subordinated Debentures, due October 1, 2013 issued under the Trust Indenture within mentioned.

THE ROYAL TRUST COMPANY, TRUSTEE

By: \_\_\_\_\_  
Authorized Signatory

\* \* \*

SCHEDULE C

LEASE OF EQUIPMENT

B E T W E E N:

SLX CANADA INC.

as Lessor

- and -

⊠

as Lessee

DATED as of ⊠

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## LEASE

THIS LEASE OF EQUIPMENT is made as of September 20, 1988 between SLX CANADA INC. (hereinafter called the "Lessor"), a company incorporated under the laws of Canada and having an office at 1500 Bow Valley Square IV, 250 6th Avenue S.W., Calgary, Alberta, T2P 3H7, as owner, and [ ] (hereinafter called the "Lessee"), a corporation [ ], as lessee.

WHEREAS the Lessor, at the request of the Lessee, has purchased the Units (as hereinafter defined) for the sole purpose of leasing the same to the Lessee hereunder;

AND WHEREAS the Lessee desires to lease from the Lessor, and the Lessor desires to lease to the Lessee, all of the Units that are duly delivered and accepted as provided herein at the rentals and upon the terms and conditions hereinafter provided.

NOW THEREFORE in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby agrees to lease to the Lessee and the Lessee hereby agrees to lease from the Lessor, for the Term, the Units so delivered and accepted as provided herein, upon the following terms and conditions:

## ARTICLE I

### INTERPRETATION

1.1 The following terms, whenever used in this Lease and any Schedules hereto, shall have the following meanings, unless the context otherwise requires:

"Arrears" means the total of all Rentals and other moneys, if any, due and owing by the Lessee hereunder, while unpaid.

"Banking Day" means any day except a Saturday, a Sunday or other day on which banks generally are not open for money market and foreign exchange dealings at their principal offices in each of Toronto, Calgary and Montreal.

"Casualty Notice Date" has the meaning set forth in Schedule B hereto.

"Casualty Occurrence" means an event in which any Unit shall be or become lost, stolen, destroyed, irreparably damaged

or damaged beyond economic repair, from any cause whatsoever, or taken or requisitioned by condemnation, expropriation or otherwise for a period in excess of ninety (90) days during the Term of this Lease or during the storage and delivery referred to in Section 18.1.

"Casualty Payment Date" has the meaning set forth in Schedule B hereto.

"Dollars" or "\$" means lawful money of Canada.

"Event of Default" shall have the meaning ascribed thereto in Section 15.1 hereof.

"Lease", "this Lease", "herein", "hereof", "hereunder", or other like words shall mean and include this Lease of Equipment together with the Schedules hereto (which form an integral part hereof) and any other agreement supplementary hereto.

"Lease Commencement Date" means with respect to each Unit, the date the same shall be deemed to be delivered to and accepted by the Lessee in accordance with Section 2.1 hereof.

"Lease Rate" means an implicit discount rate that, at the date of this Lease, causes the aggregate present value of:

- (i) the rental payments under this Lease (excluding any payments which are contingent on the extension of, exercise of or non-exercise of a termination or purchase option under this Lease); and
- (ii) the purchase option price payable to the Lessor upon the exercise by the Lessee of any purchase option at the end of the Term of this Lease,

to be equal to the cost of all the Units to the Lessor.

"Lease Termination Date" has the meaning set forth in Schedule B hereto.

"Lessee" has the meaning ascribed thereto in the recitals to this Agreement.

"Lessor" has the meaning ascribed thereto in the recitals to this Agreement.

"Office" means the office of the Lessor referred to in the first paragraph of this Agreement (Attention: President) or such other office as the Lessor may notify the Lessee from time to time in accordance with Section 23.1 hereof.

"Period" means each six month period during the Term, commencing on the Rental Commencement Date;

"Prime Rate" means the annual rate of interest established by The Royal Bank of Canada from time to time at its main branch in Toronto as a reference rate then in effect for determining interest rates on Canadian dollar commercial loans made in Canada; any change in such rate is to be effective on the date such change is established.

"Rental" means the rental payable for each Unit subject to this Lease for each Period, as set forth in Schedule B hereto.

"Rental Commencement Date" has the meaning set forth in Schedule B hereto.

"Stipulated Loss Value" means at any particular time the applicable amount determined in accordance with Schedule D hereto.

"Temporary Alterations" has the meaning ascribed thereto in Section 10.2 hereof.

"Term" means the period commencing as to each Unit on the Lease Commencement Date with respect thereto, to and including the Lease Termination Date.

"Units" means the units of equipment described in Schedule A hereto.

1.2 Any reference in this Lease to any act or statute or section thereof shall be deemed to be a reference to such act or statute or section as amended, re-enacted, substituted for or replaced from time to time. Any reference in this Lease to an agreement shall be deemed to be, except as otherwise expressly provided, a reference to such agreement as amended, modified or supplemented from time to time.

## ARTICLE II

### DELIVERY AND ACCEPTANCE OF UNITS

2.1 The Units will be tendered to the Lessee by or on behalf of the Lessor in accordance with the Direction. Upon such tender, the Lessee will cause an authorized representative to inspect each Unit, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery substantially in the form attached as Schedule C hereto, whereupon each such Unit shall be deemed to have been delivered



to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

### ARTICLE III

#### RENTALS

3.1 The Lessee shall pay to the Lessor an interim rental payment in an amount and on the date as set out in or determined in accordance with Schedule B.

3.2 From and after the Rental Commencement Date, the Lessee shall pay to the Lessor Rental for each Unit subject to this Lease for each Period, together with the other applicable payments herein provided. Rental in respect of each Period shall be payable in the manner set forth in Schedule B.

3.3 This Lease is a net lease and the Lessee shall not be entitled to any abatement, reduction or set-off against payments hereunder including, but not limited to, abatement, reductions or set-offs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in the title, condition, operation or fitness for use of, or any damage to or loss of the possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against, use of all or any of the Units by the Lessee or any other person, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease or any other document or instrument, any breach, fundamental or otherwise, by the Lessor of any representations, warranties or covenants of the Lessor contained herein, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rental payments and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

3.4 Whenever any payment shall be stated to be due on a day which is not a Banking Day, such payment shall be made on the next succeeding Banking Day.

## ARTICLE IV

### IDENTIFICATION MARKS; REGISTRATION

4.1 The Lessee shall cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto. The Lessee shall not change or permit to be changed the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement shall be promptly filed with the Lessor by the Lessee and filed, recorded or deposited at the Lessee's cost and expense in all public offices where this Lease has been or is required to be filed, recorded or deposited.

4.2 Except as above provided, the Lessee shall not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or any permitted sublessee on equipment used by them of the same or a similar type, for convenience of identification of their rights to use the Units as permitted under this Lease.

4.3 The Lessee agrees to make the registrations, filings, deposits and recordings in respect of this Lease and the Units as set forth in Schedule B hereto, at the Lessee's sole cost and expense. The Lessee will promptly furnish to the Lessor evidence of all such filing, registering, depositing and recording.

## ARTICLE V

### TAXES

5.1 The Lessee agrees to pay and to indemnify and hold the Lessor harmless from, on an after-tax basis, all taxes, assessments, duties, license and registration fees and other governmental charges, including penalties and interest (hereinafter collectively referred to as "Taxes") imposed, levied or assessed by any federal, provincial or local government or taxing authority in Canada, or, if as a result of the operation, possession or use of any Unit by or through the Lessee in any foreign country, by any government or taxing authority in a foreign country, against such Unit or upon or measured by any interest therein, or upon or with respect to the purchase, ownership, delivery, leasing or possession thereof by the Lessor, or upon or with respect to the use, possession or operation thereof by the Lessee, or on account of or measured by the rentals, earnings or gross receipts arising pursuant to this Lease (including any payment or indemnity under this Lease),

provided that the Lessee shall not be required to pay the same (or any amount by way of indemnity of the Lessor or otherwise pursuant to this Section) if and so long as it shall in good faith and with due diligence and by appropriate legal or administrative proceedings contest the validity, applicability or amount thereof (but only so long as such proceedings shall stay the collection thereof and shall not involve any risk of the sale, forfeiture or loss of any Unit or any interest therein). If a claim is made against the Lessor for any Taxes, then the Lessor shall use its reasonable efforts to notify the Lessee promptly and, if so requested by the Lessee, shall at the Lessee's expense contest the validity and amount of any Taxes which it may be required to pay and in respect of which it is entitled to reimbursement by the Lessee under this Section so long as the rights or interests of the Lessor hereunder or in such Unit will not be materially endangered thereby.

5.2 Notwithstanding the provisions of Section 5.1 of this Article V, the Lessee shall have no obligation thereunder as to:

- (i) any Taxes on, based on or measured by the net income of the Lessor imposed (i) by Canada, a province or other local taxing authority in Canada or (ii) by any foreign government or any taxing authority or governmental subdivision of a foreign country to the extent allowed as a credit against income taxes imposed by Canada, a province, or other local taxing authority taking into account any applicable limitation on the aggregate amount of such credit and after assuming that all other Taxes of the Lessor for the same or prior periods which qualify for such credit are first allowed;
- (ii) any Taxes on, based on, or measured by, the net income of the Lessor imposed by any foreign government or any taxing authority or governmental subdivision of a foreign country by virtue of the Lessor being engaged in business in such foreign country through activities unrelated to the transactions contemplated by this Lease to the extent the Lessee's obligation as to such Taxes would otherwise exceed the amount of such Taxes which would be payable if the Lessor were not so engaged in such business; or
- (iii) any Taxes which are or may become imposed by Canada on rental or similar payments being made under this Lease to a non-resident of Canada (as defined in the Income Tax Act (Canada));

5.3 In the event any reports with respect to Taxes are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor in such Units, or notify the Lessor of such requirement, and will make such reports in such manner as shall be satisfactory to the Lessor.

5.4 In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Taxes pursuant to this Article V, such liability shall continue, notwithstanding the expiration of this Lease, until all such Taxes are paid or reimbursed by the Lessee.

## ARTICLE VI

### PAYMENT FOR CASUALTY OCCURRENCES

6.1 The Lessee shall on the Casualty Notice Date in each calendar year during the Term provide written notice to the Lessor of each Unit which has suffered a Casualty Occurrence during the one year period ending 30 days prior to that date. On the Casualty Payment Date of each calendar year during the Term the Lessee shall pay to the Lessor the Stipulated Loss Value, determined as at such date, of each Unit reported by the Lessee to have suffered a Casualty Occurrence during the one year period ending 30 days prior to the Casualty Notice Date of such calendar year and of each Unit which was reported to have suffered a Casualty Occurrence in any previous year and for which no Stipulated Loss Value has been paid, plus the Rental due on the Casualty Payment Date in respect of each such Unit, and only after making such total payment the Rental for each such Unit shall cease to accrue and the term of this Lease as to each such Unit shall terminate. The Lessor shall, upon request by the Lessee, after payment by the Lessee of the amounts described in the preceding sentence, deliver to or upon the order of the Lessee a bill of sale (without recourse, representations or warranties) substantially in the form of Schedule H hereto for each such Unit executed by the Lessor and such other documents as may reasonably be required in order to transfer to the Lessee such title to such Unit as the Lessor received upon acquiring such Unit, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

Notwithstanding the foregoing, the Lessee shall not be required to make any payment under this section on a Casualty Payment Date unless such payment due exceeds \$100,000. However, the Rental in respect of each Unit shall continue to accrue until the Lessee has made the payments as described above.

For greater certainty, the Lessee shall within 90 days of the Lease Termination Date pay to the Lessor the Stipulated Loss Value, determined as at the Lease Termination Date, of each Unit which has suffered a Casualty Occurrence during the Term

and in respect of which the Lessee has not previously paid the Stipulated Loss Value pursuant to this Section 6.1.

6.2 The rights and remedies of the Lessor to enforce or recover any of the Rentals or any other amounts which are due and payable hereunder prior to the incurring of the obligation to pay the Stipulated Loss Value of any Unit shall not be affected by reason of the Casualty Occurrence with respect to such Unit.

## ARTICLE VII

### WAIVERS AND DISCLAIMER OF WARRANTIES

7.1 The Lessee acknowledges that the Units have been selected by the Lessee alone, that neither the Lessor nor its employees or agents is a manufacturer, dealer or distributor of the Units, or expert with respect thereto, that the manufacturer of the Units is not, and has not been, an agent of the Lessor with respect to the Units, and, accordingly, the Lessee without prejudice to any rights which the Lessee may have against the manufacturer of the Units or others, and subject as provided in Section 12.1, hereby releases and forever discharges the Lessor from any and all actions, causes of action, debts, damages, costs, expenses, claims, demands, rights or defences which, at any time now or hereafter may arise out of or in relation to the Units. The Lessee agrees that the Lessee has made or shall in fact make all appropriate and prudent studies in connection with the selection of the Units and all the tests and inspections thereof, as would a careful and prudent purchaser. As to all matters of selection, design, patenting, industrial design, trade marks, construction, condition, safety, suitability, fitness, capacity, performance, durability of the Units and all matters whatsoever with respect to the acceptability of the Units, the Lessee shall look only to, and shall rely solely upon the manufacturer of the Units or others, and not to or upon the Lessor or the Lessor's employees or agents.

7.2 The Lessor shall have no responsibility or liability under this Lease to the Lessee or any other person with respect to: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any inadequacy of any Units or deficiency or defect therein; or (ii) the delivery, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units are in all the foregoing respects satisfactory to the Lessee, and the Lessee shall not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

7.3 The Lessee acknowledges and agrees that, except to the limited extent otherwise provided herein, there are and will be no agreements, representations, warranties or conditions, expressed or implied, oral or written, legal, equitable,

statutory, conventional, collateral or otherwise, on the part of the Lessor respecting or in connection with the Units and that the Lessor has undertaken this transaction strictly in reliance upon the terms, conditions and provisions of this Article VII. Without limiting the generality of the foregoing, the Lessee agrees that any latent defects in or any failure of the Units shall be conclusively deemed not to be or to constitute a fundamental or other breach hereof by the Lessor, or a failure of performance or consideration hereunder on the part of the Lessor.

7.4 If applicable, the Lessee waives to the extent permitted all of the rights, benefits and protection given by Sections 19 to 24 inclusive of the Sale of Goods on Condition Act of the Province of British Columbia.

7.5 If applicable, and to the extent permitted by law, the Lessee hereby waives all its rights, benefits or protection given to it by Sections 47, 49 and 50 of The Law of Property Act and the Seizure Act of the Province of Alberta, insofar as they extend to or relate to this Lease or other security collateral thereto. The Lessee hereby acknowledges that seizure or repossession of the Units referred to in this Lease shall not, by implication of law, extinguish the Lessee's indebtedness under this Lease or other collateral security. The Lessee hereby confers upon the Lessor the right to recover from the Lessee by action on covenant for the payment contained in this Lease or in any other security collateral hereto the full Rental payable under this Lease and all other money from time to time due hereunder or under any other collateral security, notwithstanding any seizure or repossession.

7.6 The Lessee covenants and agrees with Lessor that The Limitation of Civil Rights Act of the Province of Saskatchewan shall have no application to:

- (a) this Lease;
- (b) any mortgage, charge or other security for the payment of money made, given or created by this Lease or any agreement or instrument collateral hereto;
- (c) any agreement or instrument renewing or extending or collateral to any mortgage, charge or security referred to or mentioned in sub-paragraph (b) of this Section 7.6; or
- (d) the rights, powers or remedies of Lessor under this Lease or under any mortgage, charge other security, agreement or instrument referred to or mentioned in sub-paragraphs (b) or (c) of this Section 7.6.

## ARTICLE VIII

### LESSOR'S REPRESENTATIONS AND WARRANTIES

8.1 The Lessor represents and warrants as follows:

(i) at the time of delivery of each Unit under this Lease, the Lessor's title to such Unit will be unimpaired by any act or omission of the Lessor which will in any manner prevent the performance of this Lease in accordance with its terms and, in addition, such Unit shall be free and clear of all claims, liens and encumbrances, which may result from claims against the Lessor not arising out of the ownership of the Units and which will prevent the performance of this Lease in accordance with its terms;

(ii) so long as an Event of Default shall not have occurred and then be continuing under this Lease, the Lessor shall not do (or suffer to be done by any person claiming through or against the Lessor and not against the Lessee or any sublessee) any act which interferes with any and all rights of the Lessee to peaceably and quietly hold, possess and use the Units in accordance with the terms of this Lease;

(iii) the Lessor is a corporation duly incorporated and validly subsisting under the laws of Canada, with adequate corporate power to enter into this Lease;

(iv) this Lease has been duly authorized, executed and delivered by the Lessor and constitutes a legal, valid and binding obligation of the Lessor enforceable in accordance with its terms;

(v) the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessor is a party or by which it may be bound, or contravene any provision of law, statute, rule or regulation to which the Lessor is subject, or any judgment, decree, franchise, order or permit applicable to the Lessor; and

(vi) there are no actions, suits or proceedings pending or, to the knowledge of the Lessor, threatened against the Lessor affecting this Lease or the transactions contemplated hereby which could, if adversely determined, materially and adversely affect the carrying out of such transaction.

THE REPRESENTATIONS AND WARRANTIES OF THE LESSOR SET FORTH IN THIS SECTION 8.1 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES OF THE LESSOR, WHETHER STATUTORY, WRITTEN, ORAL, OR IMPLIED, AND THE LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING

LEASED THE UNITS PURSUANT TO THIS LEASE TO HAVE MADE ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, DURABILITY, OPERATING FITNESS, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE UNITS.

8.2 The Lessor covenants that any sale, assignment, transfer, mortgage or other disposition which it may make of this Lease or of any Unit, whether prior or subsequent to delivery to the Lessee, shall be expressly subject to the terms and provisions of this Lease.

## ARTICLE IX

### LESSEE'S REPRESENTATIONS AND WARRANTIES

9.1 The Lessee represents and warrants as follows:

(i) the Lessee is a duly incorporated and validly subsisting corporation under the laws of Canada, with full corporate power and authority to own its properties and to carry on its business as presently conducted and to enter into and perform its obligations under this Lease;

(ii) this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms;

(iii) no approval is required from any public regulatory body with respect to the entering into or performance of this Lease by the Lessee, or if any such approval is required, it has been properly obtained;

(iv) the entering into and performance of this Lease will not result in any breach of, or constitute a default under any indenture, mortgage, deed of trust, loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound, or contravene any provision of law, statute, rule or regulation to which the Lessee is subject, or any judgment, decree, franchise, order or permit applicable to the Lessee; and

(v) there are no actions, suits or proceedings pending or, to the knowledge of the Lessee, threatened against the Lessee or its properties or affecting this Lease or the transactions contemplated hereby which could, if adversely determined, materially and adversely affect the carrying out of such transactions.



## ARTICLE X

### MAINTENANCE; ALTERATIONS; INSPECTIONS

10.1 The Lessee shall, at its own cost and expense, maintain and repair each Unit in accordance with the maintenance and repair standards applicable to such Unit as set forth in Schedule E hereto and otherwise keep each Unit which is subject to this Lease in good order and repair, ordinary wear and tear excepted.

10.2 The Lessee may, at its expense and without the prior consent or notice to the Lessor, make any alteration, improvement or addition to any of the Units as it may deem desirable in the proper operation of its business provided that such alteration, improvement or addition shall not materially impair the continuing use of such Units. Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit or any part thereof shall be considered accessions to such Unit (except such as are (i) not required by laws referred to in Section 14.1, (ii) not replacements or substitutions of existing parts or equipment rather than additions thereto, and (iii) readily removable without material damage thereto and without diminishing the value of or impairing the originally intended function or use of, such Unit (hereinafter called "Temporary Alterations")), and ownership of such accessions (except as aforesaid) free of any lien, charge, security interest or encumbrance shall immediately be vested in the Lessor. The Lessor and the Lessee recognize that Temporary Alterations may be made to any of the Units and may be owned by the Lessee and with the prior written consent of the Lessor (such consent not to be unreasonably withheld) may be financed by persons other than the Lessee. Upon termination of this Lease, the Lessee may, and, at the request of the Lessor, shall at the Lessee's sole cost and expense, remove the Temporary Alterations from the Units and shall restore the Units to satisfactory operating condition and to their original physical condition at the time of delivery thereof to the Lessee hereunder, ordinary wear and tear excepted. Ownership of any Temporary Alterations not so removed by the Lessee shall pass to and vest in the Lessor.

10.3 The Lessor shall have the right (but no obligation), upon reasonable notice to the Lessee and at the Lessor's sole cost and expense, by its authorized representatives, to inspect the Units at all reasonable times at such location or locations designated by the Lessee, to view the state and condition of the Units and to confirm to the Lessor the existence and proper maintenance thereof during the continuance of this Lease; provided, however, that the Lessee shall not be liable, except in the case of gross negligence of the Lessee or of its employees or agents, for any damage, injury to, or the death of any persons exercising on behalf of the Lessor or any prospective assignee of the Lessor, the rights of inspection granted hereunder.

## ARTICLE XI

### FINANCIAL AND OTHER REPORTS

11.1 The Lessee will furnish to the Lessor, on the later of (i) 90 days after the end of each fiscal year, or (ii) within 30 days of the tabling in the House of Commons of Canada of its annual report, a statement of profit and loss and of surplus for each fiscal year, and a balance sheet as at the end of such year, all in reasonable detail together with the report and opinion of a firm of independent chartered accountants.

11.2 On or before April 1st in each calendar year during the Term, the Lessee will cause to be furnished to the Lessor in such number of counterparts or copies as may reasonably be requested an accurate statement signed by a responsible officer of the Lessee, as of the preceding December 31,

(i) showing the amount, description and numbers of the Units then leased hereunder and such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request, and

(ii) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the markings required by Article IV have been preserved or replaced.

11.3 The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports to be filed by the Lessor with any Federal, provincial, state or other regulatory authority by reason of the interest of the Lessor in the Units or the leasing thereof to the Lessee.

## ARTICLE XII

### INDEMNIFICATION

12.1 The Lessee agrees to indemnify and save harmless the Lessor against any charge or claim made against the Lessor, and against any expense, loss or liability (including but not limited to solicitors' fees and expenses, patent liabilities, penalties and interest) which the Lessor may incur in any manner by reason of entering into or of the performance of this Lease or by reason of the ownership of any Unit, or which may arise in any manner out of or as the result of the ordering, acquisition, use, operation, maintenance, condition, purchase, delivery, transshipment, rejection, storage or return of any Unit under

this Lease or the occurrence of any Event of Default hereunder or any event which with the giving of notice, or lapse of time, or both, would become an Event of Default. The Lessee further agrees to indemnify and save harmless the Lessor against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury or death to any person; provided, however, that the Lessee shall not be required to indemnify the Lessor under this Article XII for negligence on the part of the Lessor, its employees and agents. The indemnities arising under this Article XII shall survive payment of all other obligations under this Lease, the sale, assignment, transfer or other disposition of this Lease or any of the Units by the Lessor, and the termination of this Lease. Anything herein to the contrary notwithstanding, the Lessee shall not be obligated to indemnify under this Article XII in respect of any charge, claim, expense, loss or liability attributable to an event occurring with respect to a Unit after such Unit shall have been assembled, delivered, stored and transported to the Lessor pursuant to the provisions hereof; provided, however, that such charge, claim, expense, loss or liability does not arise as a result of mechanical defects of such Unit which existed at the time such Unit was so returned or at the time this Lease with respect to such Unit terminated. In case any action, suit or proceeding is brought against the Lessor in connection with any claim indemnified against hereunder, the Lessee may, and upon the request of the Lessor shall, at the Lessee's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and acceptable to the Lessor and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including, without limitation, solicitors' fees and expenses) as incurred by the Lessor in connection with such action, suit or proceeding.

12.2        Upon the payment in full of any indemnities as contained in this Article XII by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice, or both, would constitute an Event of Default) shall have occurred and be continuing, (i) the Lessee shall be subrogated to any right of the Lessor in respect of the matters against which indemnity has been given and (ii) any payments received by the Lessor from any person (except the Lessee) as a result of any matter with respect to which the Lessor has been indemnified by the Lessee pursuant to this Article XII shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

### ARTICLE XIII

#### INSURANCE

13.1 The Lessee shall, at all times prior to the return of the Units to the Lessor in accordance with the terms of this Lease and during any storage period, at its own expense, cause to be carried and maintained public liability and property damage insurance in respect of the Units against the risks and in the amounts, if any, insured against by the Lessee in respect of similar equipment owned or leased by it. Notwithstanding anything to the contrary in this Section 13.1, the Lessee shall be permitted to provide for self insurance.

### ARTICLE XIV

#### ADDITIONAL COVENANTS OF THE LESSEE

14.1 The Lessee shall comply in all respects with all laws of the jurisdictions in which the Units may be operated and the Lessee shall and does hereby indemnify the Lessor and agrees to hold the Lessor harmless from and against any and all liability that may arise from any infringement or violation of any such laws by the Lessee or any sublessee, or their employees, or any other person. In the event that such laws require alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in any case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, so long as it is subject to this Lease; provided, however, that the Lessee may, in good faith, contest with due diligence by appropriate legal proceedings the validity or application of any such law in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the property rights of the Lessor hereunder.

### ARTICLE XV

#### DEFAULT AND ENFORCEMENT

15.1 If during the continuance of this Lease, one or more of the following events (hereinafter sometimes called "Events of Default") shall occur:

(i) default shall be made in the payment of any part of the Rental provided herein or any payment in respect of Casualty Occurrences and such default shall continue for a period of five (5) Banking Days after written notice from the Lessor;

(ii) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or sublease of any of the Units;

(iii) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor specifying the default and demanding that the same be remedied;

(iv) the Lessee shall file any petition or commence any proceedings under any bankruptcy, reorganization, insolvency or moratorium law for the relief of debtors;

(v) any proceedings shall be commenced against the Lessee by way of a scheme of arrangement under the Railway Act (Canada) or for any relief under bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or judgment or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier;

(vi) appointment of any receiver to take possession of all or a substantial portion of the Lessee's properties not set aside within thirty (30) days;

(vii) the Lessee shall default, as such term is defined therein, under any other agreement (of any kind whatsoever, including any other lease agreements) it may have with the Lessor whether such agreement now exists or shall hereafter be created and such default shall result in moneys being declared due and payable to the Lessor which would not otherwise be due and payable at that time and such declaration shall not be rescinded or annulled within a period of thirty days after the Lessee has been given notice of such default by the Lessor,

then, in any such case, the Lessor, at its option may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, enjoy, sell, lease or otherwise dispose of the same in such manner as the Lessor may determine free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee in respect thereof, but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the Rental for any number of days less than a full Period by multiplying the Rental for such full Period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full Period) and also to recover forthwith from the Lessee (i) as liquidated damages for loss of the bargain and not as a penalty, a sum, with respect to all Units, which equals the Stipulated Loss Value of all the Units as of the rental payment date next preceding the date of termination of this Lease, and (ii) any other damages and expenses, including, without limitation, reasonable solicitors' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease. Notwithstanding anything to the contrary contained in this clause (b), it is understood and agreed that upon and/or after payment of the amount to be paid by Lessee to Lessor under subclauses (i) and (ii) of this clause (b) Lessor shall refund to Lessee the net amount received by Lessor, such refunded amount not to exceed the amount paid by Lessee to Lessor under subclause (i) of this clause, on any sale, lease or disposition of the Units after deducting all costs and expenses including any legal fees and income and/or other taxes incurred in connection therewith.

15.2 The remedies in this Lease provided in favour of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favour existing at law or in equity. The Lessee hereby waives, to the fullest extent permitted by applicable law, all rights (other than those expressly provided for herein) now or hereafter conferred upon it by statute or otherwise to terminate or surrender this Lease or the Units or to any abatement, suspension, deferment, diminution or reduction of the Rental payments.

15.3 The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies and a waiver on one occasion shall not constitute a waiver of any such right as to any other occasion.

ARTICLE XVI

ASSIGNMENT; POSSESSION AND USE

16.1 Subject to compliance with the provisions of Section 8.2, the Lessor shall have the absolute right to sell, transfer or assign to any person, firm, corporation or other entity resident in Canada any or all of its rights, obligations, benefits and interests under, in and to this Lease or any Unit. However, the Lessee shall be under no obligation to any assignee of this Lease except upon written notice of such assignment. All the rights of the Lessor hereunder shall enure to the benefit of the Lessor's assigns. Whenever the Lessor is referred to in this Lease, it shall apply and refer to each assignee of the Lessor.

16.2 So long as an Event of Default shall not have occurred and then be continuing under this Lease, the Lessee shall be entitled to the quiet enjoyment, possession and use of the Units in accordance with the terms of this Lease, but, except as otherwise expressly provided herein, the Lessee shall not without the prior written consent of the Lessor assign or transfer its leasehold interest under this Lease in the Units or any of them (except to the extent that the provisions of any mortgage now or hereafter created on any property of the Lessee may subject the Lessee's leasehold interest to the lien thereof). In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor not related to the ownership of the Units or to the extent that the provisions of any mortgage now or hereafter created on any property of the Lessee may subject the Lessee's leasehold interest to the lien thereof) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions hereof.

16.3 Nothing in this Article XVI shall be deemed to restrict the right of the Lessee (i) to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any company incorporated under the laws of Canada (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become amalgamated, merged or consolidated and which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; or (ii) without the prior written consent of the Lessor to sublease any Unit to any party for a period (including renewals) not exceeding one year; or (iii) to

sublease any Unit to any party for a period (including renewals) of more than one year with the prior written consent of the Lessor, such consent not to be unreasonably withheld, and such consent is hereby given with respect to any sublease by the Lessee to an affiliated or subsidiary corporation incorporated in the United States or Canada. No such sublease shall relieve the Lessee of any liability or obligation hereunder which shall be and remain that of a principal and not a surety.

## ARTICLE XVII

### PURCHASE OPTIONS

17.1 The Lessee shall be entitled to exercise the purchase options, if any, described in Schedule F hereto, subject to the terms and conditions thereof.

## ARTICLE XVIII

### RETURN OF UNITS

18.1 As soon as practicable on or after the expiration of the Term, the Lessee shall (unless the Units are sold to the Lessee or shall have suffered a Casualty Occurrence), at its own cost and expense, at the request of the Lessor, assemble and deliver possession of any Units to the Lessor at such location on property of the Lessee in Canada as the Lessor may reasonably designate and permit the Lessor to store the Units for a period not exceeding 90 days. During any such storage period the Lessee shall permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of gross negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this Section 18.1. The assembling, delivery, storage and transportation of the Units as hereinabove provided are of the essence of this Lease, and upon application to any court having jurisdiction in the premises, the Lessor shall be entitled to a judgment, order or decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. Each Unit returned to the Lessor pursuant to this Section 18.1 shall be in the return condition specified in Schedule E hereto.

18.2 If this Lease shall terminate pursuant to Section 15.1, the Lessee shall forthwith deliver possession of the Units to the Lessor, and the provisions of Section 18.1 shall apply in



all respects, except that the period of storage to be provided by the Lessee at the Lessee's sole cost, expense and risk shall extend until the date all such Units have been sold, leased or otherwise disposed of by the Lessor. Without in any way limiting the obligation of the Lessee under the foregoing provisions hereof, the Lessee hereby irrevocably appoints the Lessor as its agent and attorney, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit.

#### ARTICLE XIX

##### INCOME TAX REPRESENTATIONS AND INDEMNITY

19.1 The Lessee hereby makes the income tax representations and warranties set forth in Schedule G hereto and agrees to indemnify the Lessor as provided therein.

#### ARTICLE XX

##### MILEAGE ALLOWANCE; SUBROGATION

20.1 Provided that no Event of Default has occurred hereunder and is continuing, the Lessee shall be entitled to (i) all mileage allowances and other similar moneys payable by reason of the use of the Units, and any such mileage allowances or other similar moneys received by the Lessor shall be forthwith remitted to the Lessee, and (ii) the proceeds of any claim or right of the Lessor or the Lessee against third persons for injury, damage or loss with respect to any Unit or the use or operation thereof, and the Lessee shall be subrogated to the extent of the Lessee's interest to all the Lessor's rights of recovery therefor against any other person, firm or corporation. The Lessor hereby authorizes the Lessee to make settlement of, receive payment and receipt for any and all such claims on behalf of the Lessor, and the Lessor agrees to execute and deliver from time to time such instruments and do such other acts and things as may be necessary or appropriate more fully to evidence the Lessee's authority and/or to vest in the Lessee such proceeds to the extent of the Lessee's interest therein or to effect such subrogation; and in the event of any loss, damage or destruction in respect of which the Lessee is entitled to proceeds or subrogation as aforesaid, the Lessor shall refrain from doing any act or executing any instrument which would prejudice the right of the Lessee to such proceeds or to such subrogation.

ARTICLE XXI

FURTHER ASSURANCES

21.1 The Lessee covenants and agrees from time to time at its expense to do all acts and execute all such instruments of further assurance as it shall be reasonably requested by the Lessor to do or execute for the purpose of fully carrying out and effectuating this Lease and the intent hereof.

ARTICLE XXII

INTEREST ON ARREARS

22.1 Anything to the contrary herein contained notwithstanding, any Arrears shall bear interest at a rate per annum equal to the rate set out in Schedule B hereto for the period of time during which they are overdue and shall be payable on demand.

ARTICLE XXIII

NOTICES

23.1 Any notice or other communication to a party under the provisions of this Lease shall be in writing and may be delivered personally or sent by prepaid mail, telex or telecopier to the following mailing, telex or telecopier address, as applicable:

(1) to the Lessor,

SLX Canada Inc.  
1500 Bow Valley Square IV  
250 6th Avenue S.W.  
Calgary, Alberta  
T2P 3H7  
Attention: President  
Telex: 03-825570 Answerback WCBC CGY  
Telecopier: (403) 264-1262

and to:

Bennett Jones  
3200 Shell Centre  
400 4th Avenue S.W.  
Calgary, Alberta  
T2P 0X9  
Attention: Mr. Peter A. Williams  
Telex: 03824524  
Telecopier: (403) 265-7219

(2) to the Lessee,

✱

Any such notice or other communication if personally delivered or mailed or telecopied, shall be deemed to have been given when received and, if telexed and the appropriate answerback received, shall be deemed received at the time that the answerback is received. Any party may from time to time notify the other in writing of a change of mailing, telex or telecopier address in the manner set forth herein which thereafter, until changed by like notice, shall be the address of that party for all purposes of this Lease.

#### ARTICLE XXIV

##### SEVERABILITY; EFFECT AND MODIFICATION OF LEASE

24.1 Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

24.2 This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written with respect to the leasing of the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the parties hereto.

#### ARTICLE XXV

##### EXECUTION AND COUNTERPARTS

25.1 This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in such case such counterparts together shall constitute but one and the same instrument.

#### ARTICLE XXVI

##### GOVERNING LAW AND JURISDICTION

26.1 This Lease shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. With respect to any suit, action or

proceedings relating to this Lease, each of the parties hereby irrevocably submits to the non-exclusive jurisdiction of the courts of Ontario.

ARTICLE XXVII

EFFECTIVE DATE

27.1 This Lease and the obligations of the parties hereto shall be effective as and from the date first above written.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed, as of the date first above written.

SLX CANADA INC.

By \_\_\_\_\_ c/s  
Name:  
Title:

and by \_\_\_\_\_  
Name:  
Title:

⊗

By \_\_\_\_\_ c/s  
Name:  
Title:

and by \_\_\_\_\_  
Name:  
Title:

LIST OF SCHEDULES

- A. Description of Units
- B. Lease Particulars
- C. Certificate of Acceptance
- D. Stipulated Loss Values
- E. Maintenance and Repair Standards;  
Return Condition
- F. Purchase Options
- G. Tax Representations, Warranties and Indemnity
- H. Bill of Sale

**SCHEDULE A**

**DESCRIPTION OF UNITS**

SCHEDULE B  
LEASE PARTICULARS

LEASE RATE: [     ]

RENTAL: \$\_\_\_\_\_ per Unit per Period,  
payable by [METHOD OF PAYMENT]

RENTAL COMMENCEMENT  
DATE: [April 1, \_\_\_\_] [October 1, \_\_\_\_]

INTEREST RATE ON ARREARS: [             ]

LEASE TERMINATION DATE: [             ] or such earlier date as  
this Lease is terminated pursuant to  
the provisions hereof.

INTERIM RENTAL: \$\_\_\_\_\_ per Unit per day,  
calculated from and including the  
Lease Commencement Date for each Unit  
to the Rental Commencement Date,  
payable by [METHOD OF PAYMENT]  
[OR ALTERNATIVE]

CASUALTY NOTICE DATE: [             ] or one month following  
the anniversary of the Rental  
Commencement Date in each year during  
the term of this Lease.

CASUALTY PAYMENT DATE: [             ] or six months following  
the anniversary of the Rental  
Commencement Date in each year during  
the term of this Lease.

REGISTRATIONS: Railcars: subject to the Lessor providing the  
Lessee with the appropriate  
information, the Lessee shall cause  
each Unit to be registered in the  
Official Equipment Register and in  
the Universal Machine Language  
Equipment Register (UMLER), and any  
change therein must be mutually  
agreed by the parties. The Lessee  
shall maintain such records as shall  
be required from time to time by any  
applicable regulatory agency or any  
AAR railroad interchange agreement or

rule. The Lessee shall, at its own expense, cause this Lease and any assignment hereof to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. Section 11303 and deposited with the Registrar General of Canada (with notice of such deposit to be given forthwith in the Canada Gazette) pursuant to Section 86 of the Railway Act of Canada.

Other Equipment:



SCHEDULE C

CERTIFICATE OF ACCEPTANCE

To: SLX Canada Inc. (Lessor)  
1500 Bow Valley Square IV  
250 6th Avenue S.W.  
Calgary, Alberta  
T2P 3H7  
Attention: President  
Telex: 03-825570 Answerback WCBC CGY  
Telecopier: (403) 264-1262

and to:

Bennett Jones  
3200 Shell Centre  
400 4th Avenue S.W.  
Calgary, Alberta  
T2P 0X9  
Attention: Mr. Peter A. Williams  
Telex: 03824524  
Telecopier: (403) 265-7219

Ø (Address of Lessee)

The undersigned, a duly authorized officer of Lessee, under Lease dated as of Ø, with Lessor, does hereby certify that:

Under authority of Lessee, I have accepted the units of equipment specified in Schedule A hereto attached and made a part hereof (Units), as conforming in all respect to the terms and provisions of the said Lease.

Under authority of Lessee, I further certify that by virtue of my said acceptance of said Units the same have, on the date stated, come under lease to Lessee pursuant to the terms and provisions of said Lease.

---

Authorized Inspector

SCHEDULE D

STIPULATED LOSS VALUE  
[Method of Determination etc.]

Date

[Amount] [%]

Date

[Amount] [%]

**SCHEDULE E**  
**MAINTENANCE AND REPAIR STANDARDS;**  
**RETURN CONDITION**

Maintenance and Repair Standards

(i) Railcars

Each railcar Unit shall be maintained and repaired to a standard at least equal to that of the remainder of the fleet of railcars of similar age and type maintained by the Lessee, and, at a minimum, in accordance with the A.A.R. Interchange Rules and the rules of the National Transportation Agency and other Canadian governmental authorities having jurisdiction with respect thereto.

(ii) Locomotives

Each locomotive Unit shall be maintained and repaired to a standard at least equal to that of the remainder of the fleet of locomotives of similar age and type maintained by the Lessee, and, at a minimum, in accordance with the manufacturer's specifications and the minimum standards for operation as dictated by the National Transportation Agency and other Canadian governmental authorities having jurisdiction with respect thereto and/or Federal Railroad Administration rules.

(iii) Other Equipment

[ insert as applicable ]

Return Condition

(i) Railcars

Each railcar Unit returned to the Lessor shall be in a condition at least equal to that of the remainder of the fleet of railcars of similar age and type maintained by the Lessee, and in at least as good operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, and at a minimum, in accordance with the A.A.R. Interchange Rules and the rules of the National Transportation Agency and other Canadian governmental authorities having jurisdiction with respect thereto.

(ii) Locomotives

Each locomotive Unit returned to the Lessor shall be in a condition at least equal to that of the remainder of the fleet of locomotives of similar age and type maintained by the Lessee, and in at least as good operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, and, at a minimum, in accordance with the manufacturer's specifications and the minimum standards for operation as dictated by the National Transportation Agency and other Canadian governmental authorities having jurisdiction with respect thereto and/or Federal Railroad Administration rules. Further, the average time from the last major rebuild for the Units to be returned shall not be more than the average time since the last major rebuild for the remainder of the fleet of locomotives of similar age and type maintained by the Lessee.

(iii) Other Equipment

[ insert as applicable ]

## SCHEDULE F

### PURCHASE OPTIONS

#### Purchase Options

NOT APPLICABLE

(or)

B.1 Provided that this Lease has not been earlier terminated and no Event of Default has occurred and is then continuing, the Lessee may, by not less than 180 days prior written notice, irrevocably elect to purchase all but not less than all of the Units then covered by this Lease at the end of the                    a                    Period or at the end of the                    a Period for the applicable Option Price.

B.2 In the event the Lessee elects to purchase all of the Units, upon payment of the applicable Option Price, the Lessor shall upon request of the Lessee deliver to or upon the order of the Lessee a bill of sale (without recourse, representations or warranties) substantially in the form of Schedule H hereto for such Units executed by the Lessor and such other documents as may reasonably be required in order to transfer to the Lessee title to such Units free and clear of all liens, security interests and other encumbrances created by or arising through the Lessor.

B.3 For the purpose of this Schedule F the following terms have the following meanings:

"Fair Market Value" means with respect to any Unit an amount determined on the basis of, and equal in amount to, the value which would have been obtained in an arm's length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession or (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and in such determination, cost of removal from the location of current use shall not be deducted from such value; provided, however, there shall be excluded any value attributable to Temporary Alterations made by the Lessee pursuant to the provisions hereof.

"Option Price" means with respect to the end of the                    a Period of the Lease, an amount equal to                    a of each Unit set forth in Schedule A hereto which is then subject to this

Lease, which amount has been determined by the parties at the inception of this Lease to be the expected Fair Market Value of each Unit at the end of such Period, and, with respect to the end of the        Period of the Lease, the Fair Market Value of each Unit set forth in Schedule A hereto which is then subject to this Lease.

B.4        If, after 60 days from the giving of notice by the Lessee of the Lessee's election to purchase all of the Units at the end of the        Period of the Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of such Units, the Fair Market Value thereof shall be determined in accordance with the following procedure: If either party to such determination shall have given written notice to the other requesting determination of the Fair Market Value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 10 Business Days after such notice is given, each party shall appoint an independent appraiser within 10 Business Days after such notice is given and the two appraisers so appointed shall within 10 Business Days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 10 Business Days after such notice is given, either party may apply, to make such appointment, to a judge of the Supreme Court of Ontario and both parties shall be bound by the appointment made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Value of the Units then subject to this Lease, within 10 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of the Fair Market Value by the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from that of the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Value. The provision for this appraisal procedure shall be the exclusive means of determining the Fair Market Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

SCHEDULE G

TAX REPRESENTATIONS, WARRANTIES AND INDEMNITY

1. The Lessee hereby represents and warrants to the Lessor:

(a) that the Units are depreciable property and that:

(i) a corporation described in subsection (16)(a) of Regulation 1100 under the Income Tax Act (Canada) that owns the Units shall be entitled to deduct from its income for the purposes of the Income Tax Act (Canada) and the regulations thereunder (the "Act" and the "Regulations" respectively) capital cost allowance in each year during the Term on the basis that the Units qualify as Class ~~8~~ assets (or any analogous subsequent designation) pursuant to the Act;

(ii) a corporation that carries on business and that owns the Units but is not of the type described in paragraph (16)(a) of Regulation 1100 under the Act shall be entitled to a capital cost allowance with respect to the Units computed at the rate applicable for Class ~~8~~ assets (or any analogous subsequent designation) against its net income from renting "leasing properties" as provided in subsection 1100(15) of the Regulations computed before deducting capital cost allowances; and

[ IF APPLICABLE -

(iii) a corporation of the type described in subparagraph (b)(ii) of the definition of "Qualified Transportation Equipment" contained in subsection 127(9) of the Act, that owns the Units shall be entitled to investment tax credit and refundable investment tax credit as provided in subsection 127(9) and section 127.1 respectively of the Act in respect of Units acquired by it before 1989 and which have not been used, or acquired for use or lease, for any purpose whatever before such Units were acquired by it;]

(b) that the Lessee will not, by an act of commission or omission, effect any change in the nature or use and purpose of the Units which would or could directly or indirectly cause the deductions referred to in (a) above to decrease or be eliminated;

- (c) that \$X being the purchase price paid by the Lessor for the Units represents the fair market value of the Units as of the date hereof; and
- (d) that \$X being the price at which the Lessee is entitled to purchase a Unit at the end of the X Period pursuant to the Purchase Option contained in Schedule "F", represents a reasonable estimate as of the date hereof of the fair market value of a Unit at such Purchase Option Date.

2. If, due to the inaccuracy of any representation herein made by the Lessee to the Lessor, the Lessor shall lose or shall not have the right to claim or shall suffer a disallowance of all or any portion of capital cost allowance, investment tax credit, or refundable investment tax credit with respect to any Unit (collectively referred to as "Tax Benefits"), to the extent claimed by the Lessor in its federal and provincial income tax returns for the relevant year, the following provisions shall be applicable:

- (A) upon the Lessor being notified of any such denial (including by way of assessment or reassessment, or proposed assessment or reassessment) the Lessor shall notify the Lessee and if so requested by the Lessee in a timely manner, shall contest any such action (such contestation to be at the sole expense of the Lessee), as long as the rights and interests of the Lessor shall not be adversely affected thereby; and
- (B) the Rental shall be adjusted as follows:
  - (I) the Lessor shall determine and give notice to the Lessee of the amount of each instalment of Rental which the Lessor would have required in order to obtain the after-tax net yield of funds employed to acquire the Units, as if the denial specified above had not occurred, and the Lessee shall pay to the Lessor by way of additional Rental on the tenth day following such notice, in respect of the elapsed Term of the Lease up to and including such tenth day, a sum equal to the amount by which the total Rental instalment determined under this paragraph exceeds the total Rental instalment otherwise payable hereunder, plus any provincial sales tax applicable to such additional rent payment; and
  - (II) the Lessor shall determine (and specify in the notice referred to in paragraph (I) above the amount of each instalment of Rental payable hereunder for the remainder of the Term after



such tenth day which the Lessor will require to obtain the after-tax net yield of funds employed by the Lessor to acquire the Units as if the denial specified above had not occurred and the Rental shall be increased accordingly and this Lease shall be deemed to be so amended.

Provided always that the payment contemplated by Section 2 (B)(I) and the adjustment in Rental contemplated by Section 2 (B)(II) will not be required to be made until the relevant taxing authority or a court of competent jurisdiction has made a determination with respect to such denial in respect of which the Lessee does not exercise its rights under Section 2(A) or from which there is no further right to object or appeal.

Provided further, however, that the payment contemplated by Section 2 (B)(I) and the adjustment in Rental contemplated by Section 2 (B)(II) will not be required to be made if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or if there shall have been disallowed with respect to the Lessor, all or any portion of such Tax Benefits with respect to such Unit as a direct result of the occurrence of any of the following events:

- (i) any act or omission on the part of the Lessor;
- (ii) any change in income tax legislation after the coming into force of this Lease; or
- (iii) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under Article VI hereof.

3. In addition but without duplication, the Lessee shall on demand indemnify and save harmless the Lessor from and in respect of all costs, expenses, increased payments of tax, interest, penalties, and costs of contestation of any assessment or reassessment made against the Lessor with respect to this Lease (including reasonable legal fees and disbursements) which the Lessor may suffer or incur as a result of or arising out of a denial specified above so that the net after-tax yield to the Lessor of funds employed to acquire the Units shall exist throughout the Term and any extension or renewal thereof as if the denial specified above had not occurred; provided always that the obligations of the Lessee hereunder shall only exist if the Lessor has fulfilled its obligations under Section 2(A) hereof.

4. Each determination of increased Rental or other payment due to the Lessor under this Schedule shall be submitted to the Lessee by way of a certificate of an officer of the

Lessor setting forth the amount of the increased Rental required (and the method of its calculation) and the basis for it, which certificate shall be conclusive evidence, in the absence of manifest error, of the amount of the increased Rental so required; provided, however, that the Lessee shall be entitled to receive confirmation of the amounts set forth in the certificate from the auditors of the Lessor as such confirmation may be available following the next annual audit of the Lessor's financial statements.

5. In the event that, as a result of events (other than the receipt by the Lessor of any increased Rental), it develops that the Lessor was not entitled to require such recalculation or payment of such increased Rental or was entitled to a lesser recalculation or to receive a lesser amount of increased Rental, the Lessor shall promptly refund to the Lessee on demand any excess amount received by the Lessor plus interest thereon calculated at the Prime Rate from the date such excess amount was received to the date of repayment.

6. For purposes of interpretation hereof "Lessor" shall include Lessor's successors and assigns.

7. The provisions of this Schedule shall survive the termination of the Lease and are included for the benefit of and shall be enforceable by the Lessor.

SCHEDULE H

BILL OF SALE

SLX CANADA INC. (hereinafter called the "SELLER"), in consideration of the sum of \$ dollars (\$) paid by \$, a \$ corporation (hereinafter called the "BUYER"), at or before the execution and delivery of these presents, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, transfer and set over unto the BUYER, its successors and assigns all of its right, title and interest in the following property:

(insert description of equipment)

TO HAVE AND TO HOLD the above described property unto the BUYER, its successors and assigns, for its and their own use and behoof, forever.

The SELLER hereby warrants unto the BUYER that the SELLER has legal title to the aforesaid property free and clear of all encumbrances which result from claims against SELLER whether or not related to the ownership of such property.

THE AFORESAID PROPERTY IS BEING SOLD HEREUNDER ON AN "AS-IS" BASIS AND "WITH ALL FAULTS". THE SELLER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND EXPRESSLY DISCLAIMS LIABILITY FOR LOST PROFIT OR INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR COMMERCIAL LOSSES AND ALL OTHER OBLIGATIONS OR LIABILITIES.

IN WITNESS WHEREOF, the SELLER has caused this instrument to be executed in its name by its officers thereunto duly authorized and its corporate seal to be hereunto affixed the \_\_\_\_\_ day of \_\_\_\_\_.

(CORPORATE SEAL)

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

PROVINCE OF )  
 ) ss.:  
CITY OF )

On this , before me personally appeared , to me personally known, who, being by me duly sworn, says that he is the of , that one of the seals affixed to the foregoing instrument is the seal of said Company, that said instrument was signed and sealed on behalf of said Company by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Company.

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Notary Public in and for the  
Province of

(Notarial Seal)

PROVINCE OF )  
 ) ss.:  
CITY OF )

On this , before me personally appeared to me personally known, who, being by me duly sworn, says that he is the of SLX Canada Inc., that one of the seals affixed to the foregoing instrument is the seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

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Notary Public in and for the  
Province of

(Notarial Seal)

SCHEDULE D  
COMPANY NEW ISSUE TEST CERTIFICATE

TO: The Royal Trust Company, as trustee (the "Trustee")  
FROM: SLX Canada Inc. (the "Company")

This refers to the trust indenture, formally dated September 15, 1988 between the Company and the Trustee (the "Indenture"). Unless otherwise provided, any capitalized terms herein shall be subject to the same interpretation as in the Indenture.

Pursuant to Section 8.02 of the Indenture, the Company has covenanted and agreed with the Trustee, for the benefit of the Trustee and the holders of Debentures, that the Company shall not issue any additional Class A Debentures or Class B Debentures, issue any additional common shares of the Company (following the initial issue of common shares for an aggregate consideration of \$1,000,000 where such issue may take place through two or more issues of common shares), make any optional redemption of Class A Debentures, dispose of any Lease Agreement, pay any fees to SLX Management Inc. after the Crystallization Date where such fees were earned and unpaid prior to the Crystallization Date, purchase any Residual Insurance or purchase any Eligible Equipment (each of which is hereinafter referred to as a "Restricted Activity") unless after giving effect to the Restricted Activity the New Issue Tests are met.

With respect to the following proposed Restricted Activity:

[ insert as applicable ]

the Company hereby certifies to the Trustee as follows:

1. After giving effect to the proposed Restricted Activity, the New Issue Tests are satisfied in compliance with Section 8.02(8).
2. The documents attached hereto as Schedule "A" are true copies of such information and calculations as the Company considers are necessary to demonstrate that after giving

effect to the proposed Restricted Activity, the Company  
will not be in contravention of Section 8.02(8).

DATED at Calgary, Alberta, this 8 day of 8.

SLX CANADA INC.

By: \_\_\_\_\_ c/s

By: \_\_\_\_\_

SCHEDULE E  
CLASS C NEW ISSUE TEST CERTIFICATE

TO: The Royal Trust Company, as trustee (the "Trustee")  
FROM: ☐

This refers to the trust indenture, formally dated September 15, 1988 between SLX Canada Inc. (the "Company") and the Trustee (the "Indenture"). Unless otherwise provided, any capitalized terms herein shall be subject to the same interpretation as in the Indenture.

Pursuant to Section 8.02 of the Indenture, the Company has covenanted and agreed with the Trustee, for the benefit of the Trustee and the holders of Debentures, that the Company shall not issue any additional Class A Debentures or Class B Debentures, issue any additional common shares of the Company (following the initial issue of common shares for an aggregate consideration of \$1,000,000 where such issue may take place through two or more issues of common shares), make any optional redemption of Class A Debentures, dispose of any Lease Agreement, pay any fees to SLX Management Inc. after the Crystallization Date where such fees were earned and unpaid prior to the Crystallization Date, purchase any Residual Insurance or purchase any Eligible Equipment (each of which is hereinafter referred to as a "Restricted Activity") unless after giving effect to the Restricted Activity the New Issue Tests are met.

Prior to any Restricted Activity, the Trustee is entitled to receive from the Company certain documents, as specified in Section 3.03(3), including such certificates and reports as may be required by the Trustee to confirm that the Company complies with the requirements of Section 8.02(8) after giving effect to the Restricted Activity. Section 3.03(4) specifies that the Trustee is not bound to make inquiry as to the correctness of the matters set forth in Section 3.03(3) and may rely on the documents specified but may, in its discretion, require additional evidence before acting or relying thereon.

With respect to the following proposed Restricted Activity:

[ insert as applicable ]

☐ hereby confirms and certifies to the Trustee as follows:

1. ☐ has examined the certificate of the Company to the Trustee and related documentation in respect of the proposed Restricted Activity.
2. ☐ has independently examined such financial and other records and documents of the Company and of ☐ as it

1.

considers necessary or desirable and it hereby confirms and certifies that after giving effect to the proposed Restricted Activity, the New Issue Tests are satisfied in compliance with Section 8.02(8).

2. The documents attached hereto as Schedule "A" are true copies of such information and calculations as ☐ considers are necessary to demonstrate that after giving effect to the proposed Restricted Activity, the Company will not be in contravention of Section 8.02(8).

DATED at ☐ this ☐ day of ☐.

☐

By: \_\_\_\_\_ c/s

By: \_\_\_\_\_



PROVINCE OF ONTARIO )  
 ) ss.:  
 CITY OF TORONTO )

On this 15th day of September, 1988, before me personally appeared Kathy Byles to me personally known, who, being by me duly sworn, says that she is a Senior Consultant, Corporate Trust Services of The Royal Trust Company, that one of the seals affixed to the foregoing instrument is the seal of said Company, that said instrument was signed and sealed on behalf of said Company by authority of its Board of Directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said Company.

D. S. McLean  
 Notary Public in and for the  
 Province of Ontario

(Notarial Seal)

PROVINCE OF )  
 ) ss.:  
 CITY OF )

On this 15th day of September, 1988, before me personally appeared Bruce C. Barker to me personally known, who, being by me duly sworn, says that he is the Secretary of SLX Canada Inc., that one of the seals affixed to the foregoing instrument is the seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

D. S. McLean  
 Notary Public in and for the  
 Province of Ontario

(Notarial Seal)